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Appellate Court of Maryland
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RECORD EXTRACT OF APPELLANT

IN THE
APPELLATE COURT
OF MARYLAND

September Term 2024,
No. 277

JUSTIN HOLDER

Appellant

V.

THE STATE OF MARYLAND DEPARTMENT OF NATURAL RESOURCES, *et al*,

Appellee(s)

Appeal from the Circuit Court of Anne Arundel County
The Honorable Michael Wachs

RECORD EXTRACT

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JUSTIN HOLDER
APPELLANT

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IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

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IN THE MATTER OF              :    Civil No. C-02-CV-22-001474
                              :
JUSTIN HOLDER                 :
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- - - - - - - - - - - - - - - x    Annapolis, Maryland

                                   April 5, 2024
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HEARING

WHEREUPON, proceedings in the above-entitled matter commenced.

BEFORE: THE HONORABLE J. MICHAEL WACHS, Judge

APPEARANCES:

FOR THE PETITIONER:

JUSTIN M. HOLDER, PRO SE
308 West Chapline Street
Sharpsburg, Maryland 21782

FOR THE RESPONDENT:

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Annapolis, Maryland 21401

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P R O C E E D I N G S

(Whereupon, at 9:03 a.m., the proceedings began.)

THE COURT: C-02-CV-22-1474, the matter of Justin Holder. Are you Mr. Holder, sir?

MR. HOLDER: I am Mr. Holder. I am proper person, Your Honor.

THE COURT: Okay, good morning.

MR. HOLDER: Good morning.

THE COURT: Counsel, you want to identify yourself, spelling your last name for the court reporter.

MR. ZACARIAS: Good morning, Your Honor. Carl Zacarias. Last name, Zacarias, spelled Z as in zebra, a-c-a-r-i-a-s. I am here on behalf of all the Defendants, the Department of Natural Resources, and Anthony Burrows. And with me today is Mr. Burrows.

THE COURT: Okay, thank you. Good morning.

MR. ZACARIAS: Good morning, sir.

THE COURT: So you all can have a seat if you want. I guess I always ask, I don't know whether this is an option here, I read through the case last night when it got assigned to me. Mr. Holder, have they provided you what you want? Do you have a list of what is missing? Let's put it that way.

MR. HOLDER: I have a list of what's missing, yes.

THE COURT: Have you given it to them?

MR. HOLDER: Yes.

THE COURT: Okay. Do you have it with you right now?

MR. HOLDER: I have it with me. It is pled into the actually. I can --

THE COURT: How many things are missing at this point?

MR. HOLDER: The communications with Jeannie Lippert* out of Open Space and D. Bruce Poole and the communications from Mary Ironside, the Department manager to Holly Nicodemus* with the agreement for the fencing. And agreements with Leslie and Michael Cruz* to put chains across the ---- corridor of their property.

THE COURT: Okay. Have you provided that information, or do you have that information that you could provide?

MR. ZACARIAS: You are getting right to the crux of the case, Your Honor. Is that Mr. Holder, and the reason why we are here, has dissatisfaction with DNR, that DNR can't produce a record that is not within its custody.

We have made, we have gone through an extensive search, and that is what this trial here today is about.

THE COURT: The three things that he says he is missing, you are -- the defense is we don't have them.

MR. ZACARIAS: Correct. It is not that we don't have them --

THE COURT: Not to oversimplify.

MR. ZACARIAS: Through all of our search efforts, we have not located them.

THE COURT: Okay, and have you conveyed that to Mr. Holder?

MR. ZACARIAS: Yes, we have responded to all of his PIA requests.

THE COURT: Given that, you want to go forward, Mr. Holder? Do you have any proof they have that information?

MR. HOLDER: I do have proof they have that information. I was a little bit prejudiced by the order. I have witnesses --

THE COURT: I saw there was an order that you can't do discovery. What was that about?

MR. HOLDER: Well, there is, there is a case out there, it is Hammond versus --

THE COURT: You don't do discovery in these types of cases.

MR. HOLDER: Well, I think that's incorrect. I think you don't do discovery in the context of administrative hearing typically. And that gets confused in the Maryland case law.

THE COURT: Right.

MR. HOLDER: With Hammond versus Police.

THE COURT: Yes. Well, I didn't make that ruling, so

I don't want to weigh in on the validity of it. However, that is the ruling we are stuck with at this point.

MR. HOLDER: Yes.

THE COURT: So my question is, I don't think this is going to be a too terribly complicated case. You are going to say you are missing materials. They are going to say they don't have them.

MR. HOLDER: But I think there is the element of ---- and willing violations. There's actual damages.

THE COURT: The only things at issue are what you are missing right now. Everything else has been resolved. So I am going to limit it to what it is you are missing. I mean, that is the whole purpose of the complaint is to get you what it is you have asked for, correct?

MR. HOLDER: I disagree. The Maryland Public Information Act is remedial in nature. It codifies our rights to inspect government documents.

THE COURT: No, I understand. But if I am satisfied that they don't have those materials, what am I supposed to do at that point?

MR. HOLDER: We would have a trial on their knowledge and intent, and their motive and intent in denying on whether it was a willful --

THE COURT: I am saying we are going to have a trial. I am saying if I agree that they don't have, if I accept their testimony that they searched and don't have it, what if any relief are you entitled to at that point?

MR. HOLDER: $1,000 in statutory damages, my litigation costs as the prevailing party, the cause of --

THE COURT: I was just trying to see if we could resolve the case.

MR. HOLDER: I offered $170 and we walk away, and they admit that they withheld documents. They didn't want to do that so we have to have a trial.

THE COURT: They probably don't want to admit that. I don't know if $170 would break the bank but --

MR. HOLDER: I think you are right. I think I actually lowered it to $5, Your Honor.

MR. ZACARIAS: Your Honor, if I may, just because you are the finder of fact.

THE COURT: I would give you 5 bucks.

MR. ZACARIAS: Just because you are the finder of fact here, Rule 4, 5-408, I would like to keep the proceeding without talking about the details of any sort of correspondence or communications in that regard.

THE COURT: Fair enough, fair enough. All right, can we dispense -- I read through the file. Can we dispense with opening statements and just go right to the evidence?

MR. HOLDER: I think that's fine.

MR. ZACARIAS: Your Honor, my opening is very short, and I do think, I would love to, Your Honor, but just based on the interactions we have had initially, I do feel it is important for me just to make a very quick opening regarding some of the --

THE COURT: Then I am going to let him do an opening.

MR. ZACARIAS: That is fine.

THE COURT: We also have to, this is something unexpected got set in late last night that is going to require us to take a break in the proceedings, so. My hope is we can still finish it today.

MR. ZACARIAS: I hope so as well. So as a housekeeping matter, Your Honor, the Court has already denied or granted the motions to quash, and that the only witnesses we have here today are Mr. Holder and Mr. Burrows.

THE COURT: That is why I am so optimistic we can finish.

MR. ZACARIAS: I am optimistic but, you know, Your Honor, as a litigator for 20 years, I never want to be, I never want to make predictions. But my closing is very, very brief.

THE COURT: Your opening.

MR. ZACARIAS: It does touch upon some of the matters.

THE COURT: But if you want to make an opening I am going to give him the opportunity. He is the Plaintiff.

MR. ZACARIAS: Of course, of course.

THE COURT: So is there anything you want to say in opening?

MR. HOLDER: Well, okay, I didn't note but the NPI statutes, the way we read it, we thought that they have to go first because it is their burden.

THE COURT: Yes.

MR. ZACARIAS: We agree with that.

MR. HOLDER: So I would think he would open and I would come --

THE COURT: Fair enough.

MR. ZACARIAS: We agree with that.

THE COURT: Go ahead, Mr. Zacarias.

DEFENDANTS OPENING STATEMENT

MR. ZACARIAS: And it sounds like, Your Honor, that you have already done a little bit of homework so I can even truncate my opening even more.

But this case, as we know, is one under the Maryland Public Information Act specifically, 4-362, which is the provision that allows for judicial review of a denial of a public record.

Your Honor, there are some processes here in play just in case you are not familiar with all of the intricacies of the MPIA, which is that the PIA begins with a written request from the requestor to the agency. The agency has to respond within 10 days.

And within 10 days, it has to tell the requestor whether it is going to take longer than 10 days, whether there is going to be a denial on the face of the request and whether there might be a potential fee.

Agencies in the end are required to respond fully and produce within 30 days. And because that 30-day requirement will come into play here, that is located at 4-203(a) of the general provisions article.

Of course, Your Honor, certain records and information must be withheld under certain exemptions, such as, for example, if a record is confidential subject to privileges such as attorney-client privilege, which will come into play here, Your Honor, in the evidence.

And when an agency denies the records, there are opportunities for mediation and also judicial review, which is what brings us here today.

The third amended complaint, which is the operative complaint here today, lists nine MPIA requests that Mr. Holder submitted that are at issue.

For easy reference, Your Honor, those are in paragraph 49 of the amended complaint. The evidence will show that DNR has responded to each and every -- all of these requests mentioned in the third amended complaint, and it has produced all of the responsive records in its custody.

THE COURT: Did you deny access to anything?

MR. ZACARIAS: We had to --

THE COURT: You have not denied providing things. For example, something that might be privileged.

MR. ZACARIAS: Correct. We have, we have utilized exemptions. But importantly, the amended complaint does not take issue with any of the stated exemptions that we have invoked.

THE COURT: Fair enough.

MR. ZACARIAS: Where does that leave us for trial here today, Your Honor?

Mr. Holder is contending that DNR and its PIO, public information officer, Anthony Burrows, knowingly and willfully denied Mr. Holder records because they failed to produce certain records that he has identified, and that some responses went beyond 30 days.

The third amended complaint goes on to make lots of references to records that Mr. Holder has already alluded to here today, that he says exist but were not provided.

And so those -- and the reason why I wanted to have a very brief opening before we get into the evidence is that there are a few legal standards that are implicated here.

The first one here, Your Honor, comes from general provisions 4-362(d)(1), and that is what the standard for liability is.

The standard for liability here is that if the Court finds that any Defendant knowingly and willfully failed to disclose or fully to disclose a public record, that the complaint is entitled to inspect, then there might be liability.

The statute does not speak to situations where an agency responds and produces and just can't do it within 30 days. I will save more on that for my closing.

The second legal standard that is at play here, Your Honor, comes from the MPIA case law, specifically Glass versus Anne Arundel County, and the citation for that, Your Honor, is 453 Md. 201. That is a 2017 case.

And Your Honor, Glass speaks to Mr. Holder's contentions that records exist that were not produced. And in Glass, the Court of Appeals, now of course the Supreme Court, addressed similar claims and articulated what type of search an agency is required to do.

And Your Honor, I don't know if Your Honor, would like a -- have a paper copy.

THE COURT: Sure, I will take a copy if you have one available.

MR. ZACARIAS: Of Glass.

(Pause)

MR. ZACARIAS: Your Honor, if I may approach.

THE COURT: Yes, you can bring it right up. I will take it from you.

MR. ZACARIAS: I have the highlighted portion, relevant portions highlighted. They are at pages 232 to 233.

And what Glass instructs, Your Honor, is that Defendants are required, Defendants meaning agencies, are required to conduct a search in good faith that is reasonably designed to capture all responsive records.

And Glass elaborated that those good-faith efforts must use methods that can be reasonably expected to produce the information requested.

Now here importantly, this is what strikes at Mr. Holder's claims. The issue for trial is not whether every single potentially responsive document has been unearthed, which is what Mr. Holder is urging this Court to improperly entertain.

Under Glass, and I am quoting here from 232 to 233, the reasonableness of an agency's search is to be measured prospectively by how the agency designed the effort to find responsive records, not retrospectively by its success in locating every responsive record.

A search may be reasonable and adequate without being perfect. And Your Honor, the evidence in this case is going to show that DNR and its public information officer Mr. Burrows, they processed Mr. Holder's request.

And Mr. Burrows is going to testify to the efforts to search for Mr. Holder's records that he requested. He will testify to DNR's search methods. He will testify to DNR's search capabilities and the state of records at DNR.

He will testify to the hundreds of hours that he and DNR staff have spent trying to search for records to respond to Mr. Holder. He will testify to the thousands of pages that have been produced to Mr. Holder in response to his request.

And then, Your Honor, the evidence will also show that we have a very similar requestor in Mr. Holder to the requestor in Glass. And this leads me to the third legal standard that comes into play in this case.

For the Court to find in Mr. Holder's favor, it needs to find that the Defendants knowingly and willfully failed to disclose or fully disclose the public record that he was entitled to request.

And that knowing and willful standard is what we are dealing with. The evidence is going to show that DNR responded to every request, spent hundreds of hours searching, and produced thousands of pages of records.

But the true reason that we have had difficulty in responding to his request is not due to DNR. Rather the evidence is going to show that Mr. Holder is a vexatious liar. And that it was his actions that caused the delay.

He submitted dozens of requests to DNR regarding land disputes that he has with the agency. Many are extremely broad and unmanageable. The request requests records dating back decades. Many are confusing, repetitive and redundant.

He alters and adds to his requests while they are still pending and whenever he doesn't get what he is looking for. And he submits multiple requests while DNR is still trying to respond to his previous requests.

So and on top of it, he requests, he makes MPIA requests for DNR to prove that they are trying to respond his MPIA requests.

Those are the reasons for any delay and any difficulties in responding to his requests, not anything due to DNR. At the end of the case, Your Honor, the evidence is going to lead the Court to three sort of unavoidable, undeniable findings.

The first being that DNR and Mr. Burrows have responded to all of his requests and produced all the records that it has in its custody that he is entitled to.

The second finding will be that DNR conducted reasonable good faith searches designed to locate the records that he sought. And that third, the reasons for the delay were due to Mr. Holder and not DNR. And so therefore there is no knowing and willful denial of records.

That, Your Honor, I will wrap up my closing and turn it over to Mr. Holder.

THE COURT: Opening. You keep calling it closing.

MR. ZACARIAS: Opening. I am sorry. My apologies. Did I say that? My apologies, Your Honor.

THE COURT: That is okay. Give me one second.

(Pause)

THE COURT: Did you want to say something in opening, sir?

MR. HOLDER: If I could, Your Honor.

THE COURT: Absolutely. Go right ahead.

MR. HOLDER: Thank you.

THE COURT: Give me two seconds. I am just jotting down some notes here.

MR. HOLDER: Yes, sir.

(Pause)

THE COURT: Okay. Go right ahead.

PLAINTIFF OPENING STATEMENT

MR. HOLDER: Okay. In addressing DNR's opening, they said the statute doesn't speak to the 30-day standard. It does. It's black and white. It's clear.

There's very select case law in the federal government for substantial compliance with the MPIA, some first-in, first-out stuff that doesn't exist in the Maryland body of law. It's pretty cut and dry.

We are here on the reasonableness of search. That's what Glass was about. I didn't get discovery but I did notice when they filed their affidavit with their motion for summary judgment in October of 2022, their affidavit said they didn't look in Program Open Space. They didn't ask Jeannie Lippert.

I just respectfully submit to this Court that I could go down to West Virginia and look for the keys to the Maryland State House. Probably spend years looking for them and never find them down there.

So we're going to go with the reasonableness of that search. And I think, you know, their mootness argument because they gave me the documents is sort of astounding in this situation.

In essence, DNR would like this Court to believe that they can breathe life into my claims when it's convenient for them, and then come in and give me the documents after wasting resources and years and years. And extinguish my claims.

I don't think they have the authority to subject me to their whim and just ignore the clear letter of the law. That's one of the reasons I'm here.

I would submit to this Court that Black's law dictionary, the 6th edition, defines that an act is done willfully and knowingly when the actor intends to do it and knows the nature of the act. I don't think it's as complicated as the DNR would have this Court believe.

Again like I told you, the MPI codifies the rights that a government for the people and by the people must be open. These are our documents. The evidence is going to show you that there's very limited amounts of these documents that were privileged or exempted. These were all public records.

It was things -- the exhibits are going to show that these nine requests at issue pretty much iterations of the same MPI requests that was going on from July of 2020 through now where we're just going back and forth trying to collaborate, trying to find the documents.

I didn't get any assistance. They never asked me for an extension of time. They didn't ask me questions: Hey, Mr. Holder, what are you looking at? You're not going to see any of that evidence.

It's just going to be a stonewalling. Hey, if you don't give me these, I'm going to have to take you to court. Over and over, until finally we go to court.

Finally we had dispositive motions. Finally we get to pretrial, and finally they know they got to give them up, and here comes a thousand pages of documents, some of them are responsive.

Not big documents I'm asking for. Not some of the key documents I'm asking for. As I proffer to the Court, my witnesses are going to be able to testify that these documents do exist.

And there's going to be a lot of key documents that we have that would have informed a very public debate over 30 years over this railroad in Washington County.

It's been very public. It's been shrouded in secrecy. There is great public interest, and they are embarrassing quite frankly, Your Honor. They are embarrassing to the Department of Natural Resources.

And you are going to see -- the evidence will show that they tried to frustrate my search for these documents. And they did everything they could along the way to hinder me in gaining these documents.

You're going to find that the DNR custodians are well-trained. They know the law. They know when they have to answer, how they have to answer. They are organized. You are not going to hear any testimony that somebody was sick, that documents got lost, that documents got destroyed.

And like I said, I didn't have discovery. I think you're going to find that they just didn't look in the right spot for them. And they are still not looking in the right spot for them.

These are -- there's a public policy here. You know, we have nine responses. Each and every time I had to file suit to get them. The authority in FOIA that DNR is relying on, resource management, it actually cites Payne versus Air Force, which is the federal standard for rightness.

And that's in my bench trial memo, one filed January

31, 2023. So I am just going to call the case. It's Resource Management and Payne.

And Payne was a contractor for the Air Force. And every time he asked for these bid documents, he didn't get them. He had to go to the court. He had to sue them. They said, hey, this is ripe enough.

We need to make a decision here because Payne's conduct is based on how they were treating the law. And we have to make a decision for Payne and say, look, we have to stop this.

Resource Management is different. Resource Management, there's a dispute over the policy Resource Management as it pertained to this specific segment of documents.

And they didn't know if they were going to call them privileged, if they were going to call them deliberative privilege. If they were attorneys. They weren't sure what they were going to call them.

Resource Management got sued, and they said, "well, you know what? We're just going to go ahead and give them up because we don't, we don't want a policy decision to stop you from getting your records."

In that case, there was really no rightness because it was an individual policy choice as to one request.

And this is a repeated pattern and practice of the

DNR. And it puts a hardship. The policy is crystalized enough, and the hardship it's putting on the taxpayers, the resources. The burdens on me as a requestor.

It's just very, very resourceful. I'm sorry, a waste of resources on both sides to fight over these papers right here that are my public records that belong to the public. That we should be able to inspect within 30 days according to the law.

So moving on, I don't think this Court in this case should just rubberstamp the DNR's cavalier and ---- attitude and reckless disregard for the law because the DNR is going to argue, but Your Honor, he got the documents.

I don't think I got the documents, but even if I did get the documents, there has to be some kind of remediation here. There has to be clearly I substantially prevailed. I have gotten a ton of key documents.

And I paid fees. I had to pay at least $170 to file this complaint. I had to pay to serve subpoenas.

And, you know, if Your Honor after the trial wants to hear it, I can put on a case for actual damages. I think that's something we would do after, typically I have seen it in MPIAs afterward so I'm not going to talk about that now unless you'd like me to.

THE COURT: Not at this point.

MR. HOLDER: Okay. Thank you, Your Honor.

THE COURT: Okay. You ready to call your first witness?

MR. ZACARIAS: I am, Your Honor. I may just need a minute just to kind of set up and get situated because the electronic screens went off. But I will be calling Anthony Burrows to the stand.

THE COURT: Do you need to get anything set up?

MR. ZACARIAS: And I know Your Honor has something coming up at 10:00, and I think the testimony probably will last longer than that. But just tell me when you want to break.

THE COURT: Yes, thanks.

(Pause)

THE CLERK: Step inside the witness box and remain standing. Please raise your right hand.

Whereupon,

ANTHONY MICHAEL BURROWS

was called as a witness by the Defendant, having first been duly sworn, was examined and testified as follow:

THE CLERK: Thank you. You may be seated.

THE WITNESS: Thank you.

THE CLERK: And once you are seated, please state and spell your full name for the record.

THE WITNESS: Sure. Anthony Michael Burrows. And it's, I'm sorry --

THE CLERK: Spell your name.

THE WITNESS: A-n-t-h-o-n-y, M-i-c-h-a-e-l, B as in boy, u-r-r-o-w-s.

THE CLERK: Thank you.

THE COURT: Thank you, sir.

MR. ZACARIAS: Your Honor, I don't know if you have a preference with respect to exhibits and how you like to see them, whether on the screen or on paper. I have many options for you, whichever one you prefer. I also have a binder.

THE COURT: Binder would be the best option.

MR. ZACARIAS: My exhibit, I will give you ---- folder.

THE COURT: Okay, that works.

MR. ZACARIAS: Thank you.

DIRECT EXAMINATION

BY MR. ZACARIAS:

Q Mr. Burrows, if you could, please, you have already stated your full name but could you state what your business address is?

A Sure. It's 580 Taylor Avenue, Annapolis, Maryland 21401.

Q And who is your employer?

A The State of Maryland, the Department of Natural Resources.

Q What is your position with the Department of Natural

Resources?

A I am the EGov and digital services manager.

Q What are your duties as the EGov and digital services manager?

A Well, I'm the public information coordinator for the department. I also run our Web shop. So we take care of our public facing Website, DNR.Maryland.gov. And our internal Website, our Intranet.

I also run the graphics shop for the Department. I manage our online store, and I am also the Department's photographer and videographer.

Q So is it safe to say that being the PIA coordinator is not your only duty.

A That's correct.

Q All right. Have you at all times relevant to this case had the duty of PIA coordinator?

A Yes, I have. Well, I'm sorry. I've been the PIA since March of 2022.

Q Prior to that, who was the PIA coordinator?

A Gene Deems was the PIA coordinator before 2022.

Q Okay. You have been designated here today to speak on behalf of DNR, on the agency's response as to Mr. Holder's requests that are the subject of this lawsuit. Is that correct?

A That's correct.

MR. ZACARIAS: And just to be clear, Mr. Holder did make a subpoena to DNR requesting a corporate designee on the subject of the MPIA requests that are at issue here. Mr. Burrows has been designated by DNR for that.

THE COURT: Okay, I accept that.

BY MR. ZACARIAS:

Q Mr. Burrows, I want to start by talking about your intake process for MPIA requests. Could you describe your process for intaking these requests, starting with how DNR receives these requests.

A So we have a Google form on our Website where people submit requests. That's our primary method. People can also send us requests over email or they can send them in the mail.

Q Okay. Well, with respect to the Google form, where do those go when they are, when a requestor submits through the Google form?

A Sure. They go into a Google mailbox, and we manage them through that mailbox.

Q Do you personally manage that email box?

A I do.

Q Okay. And prior to March of 2022, was it Mr. Deems that managed that email box.

A Yes.

Q What happens when a requestor submits a request through that portal? Could you just walk through what happens.

A Sure. The request goes into the form. It generates an email, which notifies me that there's been a new request. I then get the request out of a Google sheet. And I begin to process it.

Q And does it generate any sort of auto acknowledgment or anything like that?

A It does. The user gets an acknowledgment from the mailbox. It says we've received the request and we'll be getting in touch with them within 10 days with any additional details.

Q Okay. What happens next with respect to what you do when the email comes into that PIA email box?

A So I review the request and I try to identify which one of our unit custodians will be assisting me with fulfilling the PIA request. At that point, I get a copy of the email and I send it to the unit custodian, and I ask them to look over the document.

Let me know if there's any responsive documents, and I also ask them if -- how long it potentially could take them to review, respond and produce the records.

Q I want to back up a little bit. In terms of tracking, is there anything that you do when a PIA request is first received?

A Yes. We assign it a number. We use a numbering system, which is the date we received the request. It's the day, the month and the year.

Q What happens if a request is emailed or submitted through the portal like after hours or on a holiday or on a weekend?

A It's given a number for the next business day.

Q And is the next business day when you consider it received?

A Correct.

Q Okay. You had mentioned that you, you send, these MPIA requests, you pass them along to the units. Could you explain who it is in the units that you pass these requests along to?

A We have subject matter experts in the units that we reach out to. We give them to the unit custodians, is what I would refer them as, and they then take the request and figure out how best to respond to them within their unit.

Q Okay. These unit custodians, is responding to PIA requests their only duty?

A It is not. They do this other duties as assigned.

Q So they have other jobs where their duties are something totally different than PIA requests.

A Correct.

Q Please go through, what does it again, how do you send them -- what does it look like, the package that you send them or the emails or whatever it is that you send to the unit custodians?

A Sure. So we -- I make a copy of the actual request. I put it into an email, and I send it on to them. I indicate that I need to have a response in an estimated time.

Once I send it to the unit custodian, I then make a record of it in a tracking sheet.

I also create a folder in our Google system for that request. And then I send it off to them. I ask them if they have any documents that are responsive, to put them in that folder.

And I work with them over the course of the time to generate things and get them organized so we can process them and get them on to the customer.

Q Slowing down that process just a little bit here, that initial correspondence that you have with the unit custodian, how do you follow up from that?

A After the initial delivery of the emails to these folks, I follows up with them before the 10-day letter is due, and I ask them if there's an update that I can share with them or if we can resolve it before the 10-day letter is sent.

Q And really, just for the record, when you refer to a 10-day letter, what are you referring to?

A So at the 10 day mark, we send an update to the customer, letting them know that we're working on the case.

And that we are going to get back to them within a certain amount of time. So we're just checking in basically.

Q Okay. Is that something to your knowledge that is required by the MPIA?

A It is required by the MPIA, yes.

Q Okay. At any point during this juncture, do you sometimes communicate with the requestor?

A We do. If a request comes in that is confusing or it's lacking in detail or there's just questions about it for whatever reason, we do reach back out, I do reach back out to the requestor to see if I can fine-tune their request mainly just because we want to streamline our processes internally and also provide a quicker response to the customer.

Q Okay, so now I am going to transition into how a search is done. Describe how records are searched for at DNR, and the types of records that are searched for.

A So there's basically two types of records that are requested.

What I would call a unit record that are records that exist within the unit itself: paper records, records that are on their storage systems, things along those lines. And then there are email requests, or requests for email correspondence.

The -- I rely on the unit custodians to generate the unit records. And I have them do that portion of it. And if there are email records, I take care of that particular part of it, and we put requests in through our Department of Information Technology for those emails.

Q These unit records that you are referring to, if a request comes in for records relating to real property transactions, what unit would that go to?

A So that would go to the Land, Acquisition and Planning Unit, or LAP.

Q Okay. How about if a request for records was submitted to DNR for police reports of the Natural Resources Police Department?

A Sure. I have a contact in the natural resources police, and it would go to them.

Q So do you -- does the Land, Acquisition and Planning Unit have a unit custodian?

A Yes, they do.

Q Does the, and I am going to say NRP for natural resources police, just to keep it, just to keep it short. Does NRP have a unit custodian?

A Yes, they do.

Q So walk through the process of how records are searched for and collected at the unit level, these unit records that you are describing.

A Oh, I would send the request to the unit custodian. And I, again I mentioned before there are subject matter experts in these areas, and I leave it up to them to figure out what they can find and whether or not it's responsive or not.

And then they would get those documents back to me in the folder I mentioned earlier.

Q So just to be clear, I want to expand upon something you just said there. Who makes the decision of whether a particular record is responsive to a request?

A For a unit record, it's the unit custodian.

Q Okay. Now when the unit custodian collects records, what do they do with those records?

A Well, they will take them -- and it depends. If it's a paper record, they will scan them so they are digital. And if they're digital already, they will take all those records and put them into that Google drive folder that I mentioned.

Q Now you mentioned the second category of records, which were emails. How does DNR respond to or handle requests for email records?

A So if the requestor wants email correspondence, I basically have to put a request in to our Department of Information Technology. They have a form that I submit. And then they give me the records and I process those personally.

Q Do you have a term for what you described, that submission to the Department of Information Technology to be?

Do you call it like a ticket or a form?

A It's a ticket.

Q It is a ticket? Okay.

MR. ZACARIAS: And just for the Court's benefit, I am going to apologize in advance. I have been in government too long, Your Honor.

I may refer to the Department of Information Technology as DoIT just because in Maryland government, that is what we refer to as. So just for the record if I say DoIT, it is just referring to the Department of Information Technology.

BY MR. ZACARIAS:

Q Explain to me a for a little bit, explain a little bit what role DoIT has in terms of managing DNR email.

A Sure. So the Department of Information Technology is an enterprise agency, and we have what's called enterprise emails. So every agency has Google as their email client, and the Department of Information Technology manages the Google enterprise.

Q Could you elaborate a little bit more on what you mean by enterprise agency?

A They do IT work for the entire state of Maryland. And they do email, they do help desk, they do everything IT for us. We do not have IT personnel necessarily on the ground at our Department.

Q So just to be clear here then, are you the one actually conducting the search of emails.

A I do not.

Q Okay. And am I correct that that is, that is DoIT that is doing that.

A It is DoIT that does the search.

Q And they do it based on the ticket that you submit.

A Yes.

Q Elaborate a little bit more on what a ticket to DoIT would include.

A Sure. So the ticket for DoIT includes the date range the person wants the emails from. It includes a search query. An and/or situation. And it would also involve specific email addresses or a Department-wide search.

Q Does that query, is that made up of words?

A It is, yes.

Q How do you select the words to be used in the query?

A So we have to generate the query for each search, and so it's a bit of an art. We have to look at the request and try best to figure out how to fit the request into a search string.

And then when that's submitted, that's -- we get back results based on that search string.

Q Are there times where you have to sort of tweak the query?

A Yes. We have submitted in the past queries that are too complex and we get very few records. So we would have to then broaden our searches to make sure that they have more results.

Q How about conversely. Does the opposite happen?

A Yes.

Q Could you walk through that real quick?

A Yes. So we have situations where we submit very general queries and we get back thousands of records, and that makes it difficult to parse and to figure out what's responsive.

Q Okay. How long does it take for DoIT to provide results after a ticket is submitted?

A Two to three days.

Q Now I want to walk through what exactly comes back from DoIT in response to your ticket?

A I get what's called an in-box file. It's basically a file that has all the mailboxes that I've requested and any emails that are in those mailboxes.

Q In-box file in terms of softwares, could you give a little insight into what types of files you are looking at and what sort of softwares you have to use?

A We use a software program called Thunderbird. It is the only software that will open these in-box files that we're allowed to use in our agency. And what happens is when

I open up this in-box file in Thunderbird it looks very much like your regular email does. There is an in-box.

And what happens is if there's multiple people that were part of the request, all of their mailboxes show up on the left side. So it would be Anthony Burrow's mailbox. John Smith's mailbox. Jane Doe's.

And then on the right are all of the emails that were returned in those individuals' mailboxes.

Q Okay. So do the files come back in like a PST or PDF format?

A They do not. They are what's called an ENL format, which is basically unreadable for most people's software.

Q Okay. So can you still read the emails?

A I can read the emails but I cannot share the emails.

Q Okay, got it. So you have already talked a little bit about how the emails were organized in the in-box. As a return comes back to you, talk about the existence of duplicate records if you could.

A Sure. The, there are duplicate records, especially when the requests are rather broad.

Emails that get sent from one person to another person, show up in multiple mailboxes because everybody who was involved in the email correspondence, they show up as part of the results. I cannot filter out duplicates when I'm providing responses.

Q Okay. So when you are deciding what to produce, do you filter out and eliminate duplicates?

A I do not.

Q Okay. What do you have to do -- when there is something in the in-box that comes in that you believe is responsive, walk through what you have to do in order to produce it.

A So I have to read every single email regardless to see if it's responsive. When I see a responsive record, I have to convert that file into a PDF and then save it into a folder. And I generally put them in the folders that relate to the mailbox.

Q Okay. So you have to -- is that a one by one, email by email --

A Every single email manually having to convert them to a PDF. Every single time.

Q Okay. Is that a time-consuming process?

A It's very time-consuming, yes.

Q Okay. Who determines whether an email is responsive to a request?

A I determine whether or not an email is responsive to a request.

Q And is there any subsequent review other than yours?

A Yes. Once the documents are converted and put into the folder, the Department of Natural Resources Attorney

General's Office review the documents.

Q I want to walk through the sort of steps leading to production. Walk us through sort of the final steps that you take before producing records responsive to a request to the requestor.

A So once all the records are gathered, we try our best to organize them in the Google drive so that they are easy to make, to look through, and to review.

The unit custodian and then the Office of the Attorney General look through those documents and make a final review and produce, and give me a folder of documents they are going to produce to the customers.

Q Okay. Are you familiar with an exemption under the MPIA for sociological data?

A Yes.

Q Okay. What is your role with respect to sociological data?

A If the, if we have a -- especially in a situation where there is a lot of documents, I will do redactions for sociological data because it's pretty cut and dried.

Q All right. Now walk through how it is that once you have the final group of documents that is responsive, that needs to be produced, walk though how those documents are produced the requestor.

A So we will write a letter to the requestor. We will put in the letter their request. We will tell them that we have, have or don't have responsive documents.

We will indicate if there were any denials in the letter and explain that. And then we'll also put in the letter that they have the right to appeal if there was any denials.

At that point, depending on how many documents are available, we will either attach those documents to the email along with the letter or we will put those files into a situation where they can download them, and we'll put a link in the letter for them to download the documents.

Q Okay. I want to transition into the state of records at DNR and the records keeping. Let's start with where you left off, emails. How far back can DNR search for email records?

A We can search back to 2015. Well, DoIT can search back to 2015.

Q Okay. And what are the reasons for that 2015 cutoff?

A The 2015 date is when the Department of Information Technology was created. And that's when the enterprise was established. And beyond that, all the agencies did their own thing with email, and our Department does not have records before 2015.

Q So emails that were, email records that were created pre-2015, what is the state of those records?

A Well, if they were printed or if there were copies made of those emails, or if they were migrated into an existing mailbox, they would be, they would exist. Otherwise, they do not exist.

Q Okay. So is it fair to say that DNR, unless, what you just described, there's some migration or some act of preservation, DNR doesn't have emails dating back prior to 2015.

A That's correct.

Q Do you have access to any non-email servers?

A I do not.

Q Okay. Who has access to servers containing information that is not email?

A The Department custodians have access.

Q Okay. Are those the unit records you were referring to?

A Correct.

Q That's where those would be housed?

A Yes.

Q How far back can DNR search on those servers in unit records?

A It would depend I guess on the record. The retention policy for the unit.

Q With respect of say, for example, the Land, Acquisition and Planning Unit, which is a lot of what the records were requested here, what is your knowledge as to what their records retention practices are?

A So LAP would have preserved and retained any land ownership records and property boundary records for all time. Otherwise other unit records would be kept for 12 years.

Q Okay. So just to sort of sum up here, the Land, Acquisition and Planning Unit, if I understand your testimony correctly, they have records of property ownership and boundary. But beyond that, there is a general, sort of possible 12 year keeping of records.

A Yes.

Q Is that correct?

A Yes.

Q Um -- strike that.

(Pause)

BY MR. ZACARIAS:

Q Is the Land, Acquisition and Planning Unit, do you know if they are keeping records of every single correspondence and every single memorandum and every single, you know, record regardless of significance?

A I would say no.

Q Okay. Why do you say that?

A I just don't think that's possible.

Q Okay. And just for the record though, I know it may be common sense, buy why wouldn't that be possible?

A   Well, the ability to keep all records from everything, it something that, sorry, I don't know quite how to answer that.

Q   Fair enough.

A   I would say no.

MR. HOLDER: Objection. The witness said he would be speculating, Your Honor.

MR. ZACARIAS: I am done with the question.

THE COURT: Okay, thank you.

BY MR. ZACARIAS:

Q   I want to talk now a little bit about how you track MPIA requests. Can you provide a little bit of insight into that?

A   We have a tracking sheet. When a new request comes in, I add it to the sheet. We put certain dates in the sheet: the date it was received, the date the 10-day order is due, and the 30-day mark.

I also put in there who I assigned it to in the unit. And we also put in a link to the drive folder that we have shared with the unit.

Q   Is this something you do in the ordinary course of your work as a PIA coordinator for DNR?

A   Yes.

Q   Okay. I am handing you what has been marked as

Defendant's 1A.

THE COURT: We are going to call it A. You can't connect numbers and letters.

My apologies, Your Honor. I had them pre-labeled.

THE COURT: That is okay.

MR. ZACARIAS: I guess we are just going to have to do a little bit of --

THE COURT: We'll do some adjusting, yes.

MR. ZACARIAS: So please forgive me if I struggle with the connections but I will do my best.

BY MR. ZACARIAS:

Q Would you please identify what this exhibit is?

A Sure this is an excerpt from my tracking sheet I had for Mr. Holder's PIA's request.

BY MR. ZACARIAS:

Q And let's be up front here. Was this created with the assistance of counsel?

A It was.

Q Okay. For purposes of this trial?

A Yes.

Q And does the information contained in Exhibit 1A, is it derived from records you keep in the ordinary course of your duties as PIA coordinator?

A Yes.

Q Are those records that this is derived from, are they created at or around the time of events that are listed in the exhibit?

A Yes.

Q To the best of your knowledge and belief, is the information contained in Exhibit 1A true and accurate?

A Yes.

Q Now just to be up front here, recently have you identified some errors or omissions that have been discovered in this exhibit that have been corrected?

MR. HOLDER: Objection to leading question.

THE COURT: Overruled. You can answer.

BY MR. ZACARIAS:

Q In the last few days, has this been corrected?

A Yes.

Q Okay.

MR. ZACARIAS: Your Honor, I would like to offer this into evidence.

THE COURT: Okay. We are going to call it A.

MR. ZACARIAS: We are offering Exhibit A into evidence.

THE COURT: A will be received, thank you.

(The document referred to was marked for identification as Defendant's Exhibit A and was received in evidence.)

THE COURT: You have a copy in your notebook?

(Pause)

MR. HOLDER: Thank you.

(Pause)

MR. ZACARIAS: Your Honor, I am going to, for my own benefit to some extent, bring the exhibit up on the big screen here.

THE COURT: Sure.

(Pause)

BY MR. ZACARIAS:

Q Mr. Burrows, would you mind sort of walking through what the columns here represent in Exhibit A.

A Column 1, request ID, is the number that we assigned the request when it came in. The second column, received by DNR, is the date that it was received. And in the third column, date of DNR response/production, is when the response was sent.

I'm sorry. Far column, response sent, are just some notes that I took that related to the request.

Q Okay. Throughout the exhibit, do you see a few lines that are highlighted?

A I do.

Q A sort of a beige?

A Yes.

Q What are those, what are those?

A They're the subject of Mr. Holder's complaint.

Q They are the subjects of the MPIA request that are the subject of this lawsuit?

A Yes, sir.

(Pause)

Q Handing you what has been, what we are going to change the name to as Defendant's Exhibit B.

(Pause)

BY MR. ZACARIAS:

Q Would you please identify what this exhibit is?

A This is an excerpt from my tracking sheet from Mr. Holder's PIA requests.

Q And to be upfront, is this something that you created with the help of counsel?

A Yes.

Q Is the information -- does it contain the actual language of the MPIA request that Mr. Holder has submitted to DNR?

A Yes.

Q Is the information contained in here derived from records that you keep in the ordinary course of your duties as PIA coordinator?

A Yes.

Q Are those records created at or around the time of the offense listed in the exhibit?

A Yes.

Q To the best of your knowledge and belief, is the information in Exhibit B true and accurate?

A Yes.

MR. ZACARIAS: Your Honor, I would like to offer this into evidence.

THE COURT: B will be received.

(The document referred to was marked for identification as Defendant's Exhibit B and was received in evidence.)

(Pause)

MR. ZACARIAS: My apologies about that, Your Honor.

THE COURT: There is no problem.

MR. ZACARIAS: In the future, maybe I will coordinate with the law clerk to see what is the best practice.

BY MR. ZACARIAS:

Q I want to direct your attention to Exhibit A and the very first entry in Exhibit A. The very first row, I should say. And this is where it said there is a request ID -- request ID 060120. Do you see what we are looking at?

A Ye.

Q Would that be the first MPIA request that DNA has on record form Mr. Holder?

A Yes.

Q Based on the information contained in Exhibits A and B, approximately how many requests, MPIA requests, has Mr. Holder submitted to DNR?

A Sixty.

Q About 60?

A About 60.

MR. ZACARIAS: Your Honor, I don't know if now is a good time to break since I know you have another matter.

THE COURT: I am missing some attorneys so we can keep rolling just so we don't lose any time. I appreciate it.

MR. ZACARIAS: Thank you.

BY MR. ZACARIAS:

Q I want to move on to Mr. Holder's MPIA requests specifically. Could you describe, just generally, the difficulty that you have had in responding to Mr. Holder's MPIA requests?

A So Mr. Holder's requests are very complex. They are long running. They have a lot of information. They're repetitive. And he also weaves in requests while we're working on the requests he's gotten submitted to us.

And just to illustrate that a little bit. I mentioned earlier about the search strings we have to use to locate emails. It's very difficult to create a search based on the requests that Mr. Holder sends in. It's challenging.

Q During the course of his submitting requests, does he modify or alter requests?

A Yes.

Q Could you describe how so?

A While we're working on a request, he may add new people to the request, which makes us redo the entire request. And he will add in new things all together. He will also change information as we go along.

Q You testified there that requires you to redo the request. Do you mean that it requires you to redo the search for records?

A It does because if he puts a new person into the mix and we're doing a search for records, we basically have to redo it because it's not only the person that we're looking for that he's added, but it's all the folks that they interacted with throughout the course of the search, so we have to do everything over.

Q When Mr. Holder doesn't get the records that he expects, what does he do then?

A He usually submits another request with a slightly modified version of what he sent previously.

Q Do his requests -- do they generally lend themselves to easy or difficult searches?

A Difficult.

Q You testified previously to the query that you have to create to search for email. Can you describe some of that -- the difficulty that you have with respect to creating queries for email searches?

A So, the queries we use are what are called "and/or queries." So we have to kind of combine words to tell Google what to find in emails.

And an example of a general request from Mr. Holder is a paragraph long, detailed, with key word request that goes from -- it has information about cities, about people, about topics, about cases, about property.

And it makes it difficult to run a search because we -- if I run that all the way -- if I run his request through our search, we get back no records because there are no exact matches.

So what I have to do is, I have to do very general searches on words like Weverton, Roxbury, rail trail. And those results bring back thousands of returns.

And then we have to go in and we have to read each of those emails in those returns to figure out if those match up to what he has sent in.

Q As this is taking place, what if anything do you do to keep Mr. Holder kept up to date with respect to the status of responses?

A I have generally, since we had multiple requests in for Mr. Holder, I would give him a weekly update, listing all the open requests we had and where I was in various stages as far the completions.

Q Is this something that is either the 10 day letter or in addition to the 10 day letter you referred to earlier?

A It would be in addition to what the 10 day would have been.

THE COURT: This is probably a good place to break.

MR. ZACARIAS: It is a great place to break.

THE COURT: You may step down, sir.

THE WITNESS: Thank you, sir.

THE COURT: Thank you. If you all will just step back. You can leave your materials there. That way, you don't have to pack everything up again. The attorneys aren't going to touch your materials.

(Whereupon, at 10:03 p.m., case was passed and proceedings resumed at 11:13 a.m.)

THE COURT: I am going to recall the case that we were in the middle of. This is C-02-CV-22-1474, In the Matter of Justin Holder. Mr. Holder is still present. Counsel, Mr. Zacarias for the defense is still present. And the witness is -- Mr. Burrows is still on the witness stand.

THE COURT: Mr. Burrows, I am going to remind you that you are still under oath from earlier before. If you would just state your name again before we begin the testimony.

THE WITNESS: Anthony Michael Burrows

THE COURT: Thank you, sir. And then you can have a seat, sir.

MR. HOLDER: Thank you, Your Honor.

THE COURT: If you need a minute to get organized, that is fine as well.

(Pause)

THE COURT: I am ready whenever you are.

MR. ZACARIAS: Your Honor, one little housekeeping matter before I continue with Mr. Burrows.

And that is, I just wanted -- I realized it during my opening, I neglected to sort of, at least just for the record, state what the MPIA request numbers are that are at issue in this case.

THE COURT: Okay. The ones in paragraph 49 of the third amended complaint.

MR. ZACARIAS: Forty-nine, and I just want -- correct. If I am going to --

THE COURT: I pulled them up.

MR. ZACARIAS: I am going to ask or examine Mr. Burrows relating to those numbers and I just for the record because we actually haven't listed those numbers, want to say into the record.

And they are Numbers -- although these are not in order. I am just going from what is in paragraph

49 -- 121122, 121922, 111422a, 101722, 103122a, 070122, 052422, 070722, and 073022.

Just wanted to make sure that was in the record before I launched into an examination of Mr. Burrows.

THE COURT: Yes, sir. Thank you very much.

(Pause)

THE CLERK: Counsel, would you have him state his name for the record please?

MR. ZACARIAS: He did.

THE CLERK: He did? Okay.

MR. ZACARIAS: He did.

THE CLERK: Thank you.

MR. ZACARIAS: I asked him.

THE COURT: Thank you.

MR. ZACARIAS: I swear I asked.

(Pause)

DIRECT EXAMINATION (Resumes)

BY MR. ZACARIAS:

Q Okay, Mr. Burrows, I would like to resume and start by talking about the first two requests that are the subject of this litigation. And when I say the first two requests, I am going to go in chronological order here, starting with the oldest versus the newest.

I want to direct your attention to what was previously marked as Exhibits A and B. Or I should say, let me direct your attention to Exhibit B. Do you still have that in front of you?

A Yes.

Q The first highlighted entry is numbered -- and I will bring it up on the big screen. The first highlighted entry is 070120. Do you see where I am looking at? And I have it up on the big screen if you need to see that.

A Yes.

Q And then the next one that is highlighted is 0524 -- bear with me a second.

MR. ZACARIAS: Sorry, Your Honor. And Your Honor, this is on page -- page 9 of Exhibit B.

BY MR. ZACARIAS:

Q The next one that is highlighted is 052422. Do you see where I am talking about?

A Yes.

Q And so, starting with 070120, based on your earlier testimony, does that number indicate the date that DNR received the request?

A Yes, it does.

Q And would that be July 1, 2020?

A Yes.

Q The language that is contained in that column that is -- it says Request Language from Justin Holder, is that a verbatim copy of the request that Mr. Holder submitted to DNR?

A Yes.

MR. ZACARIAH: Your Honor, you said we are sticking with just straight alphabetical exhibit numbers? Okay.

THE COURT: Straight, yes. Just A, B, C, D, E, F.

BY MR. ZACARIAS:

Q I am handing you what is going to be marked as Defense Exhibit C.

(Pause)

THE WITNESS: Thank you.

(Pause)

BY MR. ZACARIAS:

Q I am also going to hand you what is being marked as Defense Exhibit D. Have you had a moment to take a look at these two exhibits?

A Yes.

(The document referred to was marked for identification as Defendant's Exhibit D.)

BY MR. ZACARIAS:

Q Would you please identify what the exhibit is that has been labeled now as Exhibit C?

A Exhibit C is a request from Mr. Holder to the PIA mailbox. And it is what is 070120.

Q Is this the actual request, or is this something that is a response to the request?

A So this is a response from Gene Deems, the public information coordinator at the time to Mr. Holder's form submission for a Public Information Act request.

Q Is it correct, the date of this email is December 18th, 2020, the time is 9:41 a.m., and it is to Mr. Holder?

A Yes.

MR. ZACARIAS: I would like to offer Defense Exhibit C into evidence.

THE COURT: It will be received. Just so I am -- I just want to make sure I am clear. It was previously marked 2A.

MR. ZACARIAS: Correct.

THE COURT: Got it. C will be received.

(The document referred to was marked for identification as Defendant's Exhibit C and was received in evidence.)

BY MR. ZACARIAS:

Q All right, Mr. Burrows. What is the purpose of this communication?

A This is a request from Mr. Holder for information under the Public Information Act.

Q Is this DNR's response to his MPIA request number 070120?

A This is a confirmation of receipt.

Q I want to direct your attention upon Exhibit C to the bottom paragraph.

A Oh, my apologies. I am sorry. This is a confirmation that he has completed the request and is sending a response to Mr. Holder. My bad.

Q I am going to read just a little bit of that paragraph, where it says, "Please confirm when you receive the email and please download all the documents, as they will not remain in the drive indefinitely." What was Mr. Deems doing in terms of providing something to Mr. Holder?

A Since there were mostly likely -- sorry. Since there were multiple documents, there were too many to attach to an email, he provided a download for Mr. Holder.

Q Describe if you can what, with respect to this particular request, what the documents produced were.

A The documents that were produced were land records, communications, other LAP* documents that were collected from the unit.

Q What did the unit -- what was the state of those records within the unit?

A They were paper documents.

Q How were they collected and where were they put?

A They were collected by the unit. They were put into a file and then they were scanned in and given to Gene. And Gene put them into -- sorry. Then they put them into the

Google drive as a part of the process.

Q Were the documents voluminous?

A Yes. I would say so, yes.

Q You said earlier that the documents were too much to put into just an attachment.

A Correct. Yes. There were many documents.

Q Was a fee charged for this request?

A There was no fee charged for this request.

Q Moving your attention to what is now Exhibit D. Can you describe what this is?

A This is a response from Mr. Holder.

Q How about this? Let's start with just generally what it is, rather than the first email. Can you speak generally?

A Well, it's an email. And what we have here is a follow up from Mr. Deems, explaining that this response is not only a response to number 070120, but it's also involving the responses for the other PIAs that are listed in the -- the numbered below. 070127, 082420, 082820, 091720, and 112720.

THE COURT: Can I argue for one moment? I just have to ask an important question. So these are the correct dates?

THE CLERK: Yes.

THE COURT: Okay, thank you. Appreciate it. Go right ahead, sir.

MR. ZACARIAS: I would like to offer what has been now relabeled as Defense Exhibit D into evidence.

THE COURT: Yes, D will be received. Thank you.

(The document marked for identification as Defendant's Exhibit D was received in evidence.)

BY MR. ZACARIAS:

Q After this communication, what happened if anything regarding this set of MPIA requests?

A After this, the request was considered closed.

Q Did anything happen after you closed the request? Did Mr. Holder follow up?

A Mr. Holder followed up to this request, indicating that he believed he had not received everything he asked for.

Q What did he do -- did he do anything else besides just simply telling you he didn't believe that he got the records he requested?

A No.

Q Did he request mediation?

A He requested mediation, yes.

Q So did the Department undertake mediation with Mr. Holder?

A Yes.

Q Was a resolution reached during that mediation?

A Yes.

Q Approximately, what was the date or timeframe in which the resolution was reached?

A It was on or around May the 24th, 2022.

Q And at this time, have you taken over the roles and responsibilities of PIA coordinator from Mr. Deems?

A Yes.

Q I am handing you what is going to be marked as Defense Exhibit E.

(The document referred to was marked for identification as Defendant's Exhibit E.)

(Pause)

MR. ZACARIAS: And just for the record, Your Honor, in the binder that I gave you, this is labeled as 2C.

THE COURT: Thank you.

BY MR. ZACARIAS:

Q Take a moment to review that if you need to.

(Pause)

MR. HOLDER: I am going to object as to the same old evidence, 5-408 re: mediation. It's discussed in our mediation. He didn't want to bring this in earlier. I mean, now he's admitted evidence of it.

THE COURT: Is it a -- I haven't read it yet. Does it include information about proposed settlement of any type?

MR. HOLDER: It does.

MR. ZACARIAS: Your Honor, what I want to proffer is that --

THE COURT: Yes.

MR. ZACARIAS: -- the resolution reached in mediation resulted in one of the PIA requests that is subject to this lawsuit. And Mr. Burrows can explain what he did in response to the mediation, in terms of carrying out that resolution and then producing or --

THE COURT: Rather than receiving the document, can we just have him explain the things where there was -- I don't want discussion about potential settlements I guess is the issue. I don't know if the -- I haven't looked at it yet, so I don't know what it says about it.

MR. ZACARIAS: How about this? I will let Mr. Burrows testify a little bit because Mr. Holder has challenged that the Department has not responded to 052422, and that PIA request was the product of that resolution.

THE COURT: I might receive it for that limited purpose, but let's go ahead with the testimony. For now, the objection is overruled. I am going to let you move on to your next question.

MR. ZACARIAS: So do you want me to -- you don't want me to ask him questions about not relating to the exhibit then. Okay.

BY MR. ZACARIAS:

Q Real quick. Walk me through. Without talking about what was said during the mediation, was there a resolution?

A Yes.

Q Did that resolution involve the creation of another PIA request?

A Yes.

Q Explain to the Court what that PIA request was. Start there.

A Well, as a result of our mediation, all parties agreed that we would adjust Mr. Holder's initial request and we all agreed that I would run another search based on what Mr. Holder, Ms. Kirshner* had agreed on, and I did that.

Q What was the result of that search?

A There were no responsive documents.

Q Did you respond to Mr. Holder? Did you tell him that?

A Yes, I did.

MR. ZACARIAS: And, Your Honor, I know you haven't looked at the exhibit but the exhibit reflects this correspondence and communication, i.e., the result of the mediation and the resulting PIA request and then Mr. Burrows' response to Mr. Holder.

THE COURT: If you are offering it, I am going to receive it for that limited purpose. I will disregard any other matters that shouldn't be considered.

MR. ZACARIAS: Okay.

MR. HOLDER: Okay.

THE COURT: Okay? Thanks.

MR. HOLDER: And I would just object. When he said "we," I would clarify it is just the Department. We not we as in speaking for me as in hearsay.

THE COURT: I will let you question the witness about that when we get to that.

MR. HOLDER: Yes, sir.

THE COURT: That is E?

MR. ZACARIAS: Offered, yes.

THE COURT: E will be received.

(The document marked for identification as Defendant's Exhibit E was received in evidence.)

MR. ZACARIAS: Thank you.

(Pause)

BY MR. ZACARIAS:

Q After you responded to this request that was crafted based on -- after the mediation, was Mr. Holder satisfied?

A No. If I may. He was and he said that he did agree that I had settled that mediation successfully and he was happy with my response to the request that he had agreed to in mediation.

Q But what happened after that?

A He then requested another -- having submitted another request and said that he never did give up his rights to get the answer he initially asked for in 070120.

Q If I could direct your attention to what is now E, Defense Exhibit E. And I would like to direct your attention to the top email there, on the top of the thread, that is from Mr. Holder to you, dated May 24th, 2022.

A Yes.

Q Do you see what I am talking about?

A I do.

Q Do you ---- the email where he says, "In the totality of those responses, I do not locate:" and then he lists some documents that he believes that he didn't locate?

A Yes.

(Pause)

BY MR. ZACARIAS:

Q I am handing you what is going to be marked now as Defense Exhibit F.

(Pause)

BY MR. ZACARIAS:

Q Would you identify what that exhibit is?

A Yes. It's an email from me to Mr. Holder, identifying three of the items he had asked about. And we had responded to this and basically told him that the information in Items A and C were already issued to him in the previous response and that the item in B we had responsive documents.

Q I want to direct your attention to a few things on this email, and bear with me just a second. This is an email dated September 12th, 2022, correct?

A Yes.

Q And it is from you to Mr. Holder, correct?

A Yes.

MR. ZACARIAS: I would like to offer Exhibit F into evidence.

THE COURT: F will be received. Thank you.

(The document referred to was marked for identification as Defendant's Exhibit F and was received in evidence.)

BY MR. ZACARIAS:

Q A couple of things here first that I want to bring your attention to here. Looking at the very beginning of the letter, you state to Mr. Holder, "I am responding to your Public Information Act Request Number 070722."

And I am going to stop there. That number, walk me through or explain to the Court the assignment of that number.

A So, it is a request that we generated on the 7th of July in 2022, and it was in response to his saying we did not give him everything he wanted to on the 052422 request.

Q Is the 070722 request -- is it repeated verbatim there at the top of exhibit F?

A Yes.

Q Is this your response to that request?

A It is my response to that request.

Q I think you may have testified to this a little bit. You said that for -- that for A and C, you are attaching records that are responsive.

A Yes.

Q Are those records there visible as attachments to the -- were there PDF files?

A They were attached to the email.

Q For the Part B of Mr. Holder's request, can you confirm that there are no responsive records?

A There were no responsive records.

Q Thank you. Earlier you testified that Mr. Holder -- one of the difficulties you had with him was that he would sort of pile requests on top of requests. Is this an example of one of those?

A Yes.

Q Did you refer this request to any of the units within DNR?

A Yes.

Q What unit did you refer it to?

A LAP, Land Acquisition and Planning.

Q Did they conduct another search?

A Yes.

Q What was their conclusion upon conducting another search?

A That there were no additional responsive documents.

Q In other words, this record was duplicative.

A Yes.

Q I want to refer you back, if you could, if you still have Exhibit B in front of you.

A Yes.

Q I am going to direct your attention to --

(Pause)

BY MR. ZACARIAS:

Q I am going to direct your attention to page 9 of the exhibit, and specifically the entry that is Request 073022.

A Yes.

Q And upon Exhibit B, does that entry in the request language box reflect what the request was?

A Yes.

Q If you could take a peek at that request and explain, in your words, what is it in Request 073022 that Mr. Holder is asking for?

A While I was working on some of Mr. Holder's requests, I was providing him updates weekly about the status of the situation of his various requests. Mr. Holder put in a request to verify that I was indeed doing what I said I was doing by working on things and I was waiting on responses.

So, I provided him with documentation from folks that I'd been working with that verified that I had been reaching out to them and they had been replying to me that they were working on stuff and were trying to get back to me.

Q I am handing you what has been marked as Defense Exhibit G.

BY MR. ZACARIAS:

Q Could you please identify what this exhibit is?

A Yes. I'm responding to PIA Number 073022. And I basically was telling Mr. Holder that I had identified responsive documents. I reiterated what his request was. And I responded to him. And I sent him the documents.

Q This is an email from you. The date is September 27th, 2022 at 3:38 p.m.

A Yes.

MR. ZACARIAS: I would like to offer Defense Exhibit G into evidence.

THE COURT: G will be received.

(The document referred to was marked for identification as Defendant's Exhibit G and was received in evidence.)

BY MR. ZACARIAS:

Q I want to direct your attention to the bottom paragraphs of that exhibit, on the first page. Can you explain what the paragraph is that it begins with Note?

A Since this was in response to 070722, I reiterated that the information he had requested wasn't available in the documents.

Q For these requests, did DNR charge any fee?

A No.

MR. ZACARIAS: I am going to spare the Court with exhibits so we can move a little more swiftly here.

BY MR. ZACARIAS:

Q Can you describe very briefly what the responsive documents were to 033022?

A I'm sorry. Can you say that number again?

Q If you look at Exhibit 4A, can you describe what the responsive documents were?

A Oh, I'm sorry. Yes. So, these were, again, they were --

(Pause)

MR. ZACARIAS: Strike the question.

BY MR. ZACARIAS:

Q I will work it a little differently.

A Okay.

Q I am going to hand you what is being marked as Defense Exhibit H and Defense Exhibit I.

BY MR. ZACARIAS:

Q Could you describe what Defense Exhibits H and I are?

A Sure. It's discussions about retrieving documents for that PIA that were land records and information from the Natural Resources Police.

MR. ZACARIAS: I would like to offer Defense Exhibits H and I into evidence.

THE COURT: They will both be received.

(The documents referred to were marked for identification as Defendant's Exhibits H and I and were received in evidence.)

(Pause)

BY MR. ZACARIAS:

Q In your own words, what is it that 073022, that request from Mr. Holder -- what is it that he is asking for? What sort of records is he asking for, in your own words?

A So for 073022, what he's asking for -- he's asking for proof that I'm working on his PIAs and not lying to him.

Q Has Mr. Holder, during the course of your interactions with him, made similar requests?

A Not for documentation.

Q Not for documentation? But has he asked you for records and documents relating to how you perform your job?

A Yes.

Q I would like to move to the next request that is a subject of this litigation. I am going to hand you what is being marked -- we are up to J I believe?

THE COURT: We are up to J, yes. J is your 5 I think.

MR. ZACARIAS: Defense Exhibit J.

(The document referred to was marked for identification as Defendant's Exhibit J.)

BY MR. ZACARIAS:

Q Could you explain what this exhibit is?

A It is a request from Mr. Holder for various correspondence that relates to a gentleman by the name of D. Bruce Poole.

Q This is an email that is dated November 21st, 2022, at 11:53 a.m. It is from you to Mr. Holder.

A Yes.

Q Is this in the actual PIA request, or is it your response to the PIA request?

A This is a response to the PIA request.

Q Are you producing records in response to his request?

A I am producing records.

Q And are you charging a fee?

A I am not charging a fee.

Q Has Mr. Holder made other requests that are not the subject of this litigation relating to D. Bruce Poole?

A Yes.

Q To your knowledge, is he satisfied with DNR's production of records relating D. Bruce Poole?

A No.

Q If DNR doesn't have records, what are the possible reasons why DNR may not have the records that he seeks?

A Well, the records could not exist. They could be older records that weren't kept or scanned in. Or they could have been purged if they were very old.

Q How about if they were emails? What are the possibilities for why emails relating to Mr. Poole might not exist?

A Well, if they were before 2015, they wouldn't exist. That's one of the reasons.

Q What was the date of the correspondence that Mr. Holder is seeking from D. Bruce Poole to the Department of Natural Resources?

A It's 1987 to the present.

MR. ZACARIAS: I would like to offer Defense Exhibit J into evidence.

THE COURT: J? J will be received.

(The document was marked for

identification as Defendant's
Exhibit J was received in
evidence.)

MR. ZACARIAS: Did I already --

THE COURT: I feel like I already accepted that one but I will double receive it.

MR. HOLDER: I got a J. I mean, I got a copy of it.

MR. ZACARIAS: Was this your copy I just didn't give to you? Did I give you a copy?

MR. HOLDER: I have a copy of J here. I just don't think --

MR. ZACARIAS: J is already received. My apologies. My apologies. There is a copy if you want.

MR. HOLDER: No, I already have it. Yeah, I have a copy.

BY MR. ZACARIAS:

Q I would like to move to the next request that is a subject of this litigation. I am handing you what is going to be Defense Exhibit K.

THE CLERK: Counsel, I will need a copy of J as well.

MR. ZACARIAS: Oh, I am sorry. I didn't realize it.

THE CLERK: That is okay.

MR. HOLDER: That is probably where the copy went to.

MR. ZACARIAS: Mystery solved.

BY MR. ZACARIAS:

Q Could you identify what has been marked as Defense Exhibit K?

A This is my response to Public Information Request Number 103122A.

Q Could you take a moment and explain what the A is in that number?

A Yes. When we get more than one request in a day, we use alpha characters after the dates to indicate more than one.

Q So this is an email dated February 1st, 2023, at 12:01 p.m. from you to Mr. Holder. Is this your response to Request Number -- on behalf of DNR, to Request Number 103122A?

A It is.

MR. ZACARIAS: I would like to offer Defense Exhibit K into evidence.

THE COURT: K will be received.

(The document referred to was marked for identification as Defendant's Exhibit K and was received in evidence.)

BY MR. ZACARIAS:

Q Mr. Burrows, describe if you could the efforts on the part of DNR and yourself to fulfill this request, starting with emails.

A So, this request he asks for -- can you scroll back up a little bit?

Q Sure.

A Thank you. "Any and all correspondence -- letters, emails, notes, memorandum, communications, transcripts, recordings, records, and/or files."

And then he asks for information that relates to the abandoned branch of the Washington County Railroad, aka Weverton to Roxbury trail, aka Civil War trail in Washington County, Maryland.

For us to do a search for this, I have to search everybody's email address in the entire Department of Natural Resources.

So, when I submit the search, I would -- I put in the searched items that he includes and then I run a request across the entire Department. And -- I don't believe he put a date range in so I would have done it quite far back into the past.

I can't -- when I put in things like "Washington County Railroad" and "Weverton to Roxbury rail trail," we get very few results back because there are no exact matches.

So I have to do things like "Washington" and "Railroad" and "Weverton" and "Roxbury." Weverton and Roxbury are trails that we manage in the Department.

So when I did the search, we got back a high -- a big, big amount when it came back, the documents that we to review. And that's the challenge with some of the requests.

Q You testified earlier about the difficulty in creating tickets to DoIT. Was this a difficult ticket to create?

A It was a difficult ticket to create, yes.

Q Do you recall approximately how many emails DoIT provided to you on your initial email search efforts?

A It was approximately 15,000.

Q How many emails were --

THE COURT: Fifteen thousand?

THE WITNESS: Fifteen thousand, yeah.

BY MR. ZACARIAS:

Q How many emails were ultimately produced?

A One hundred. Eighty-three actually. I'm sorry.

Q So just to recap here. Mr. Holder's request required a difficult DoIT ticket that produced 15,000 emails. Did you have to review all of those emails?

A Yes.

Q And ultimately 83 of them were responsive to his request?

A Yes.

Q I would like to move to the next request that is a subject of this litigation.

MR. ZACARIAS: Before I move on, Your Honor, I do want to just quickly touch base. I don't know what your practice is with respect to taking lunch breaks.

THE COURT: Noon.

MR. ZACARIAS: Do you have a set time or anything like that?

THE COURT: Noon.

MR. ZACARIAS: Okay, got it. Noon?

THE COURT: Yes.

BY MR. ZACARIAS:

Q I am handing you what is being marked as Defense Exhibit L.

(Pause)

BY MR. ZACARIAS:

Q Would you please identify what has been marked as Exhibit L?

A This is my response letter to Mr. Holder for Public Information Act Number 111422A. I have reiterated Mr. Holder's request in my response letter and I provided him with a link to the documents that I sent to him.

Q Quick question. This is a little bit different than the prior responses, which were by email. This seems to be on a letterhead. What is the explanation behind that?

A We just switched our process at that point in time to sending letters versus sending emails.

MR. ZACARIAS: I would like to offer Defense Exhibit L in to evidence.

THE COURT: It will be received.

(The document referred to was marked for identification as Defendant's Exhibit L and was received in evidence.)

BY MR. ZACARIAS:

Q I am going to refer you to the part of Exhibit L that you have italicized there. As you have been testifying to in other exhibits, is that a verbatim recitation of the MPIA request?

A Yes, that is an example of Mr. Holder -- that is Mr. Holder's request.

Q And I just want to draw your attention to it. Looking at the things that he has requested, is it correct he has 11 categories of documents that he is requesting?

A Yes.

Q I want to note that the label that you have on this request is 111422A. Does that number indicate the date in which DNR received the request?

A Yes.

Q So is it fair to say that is a November 11th, 2023? Is that correct?

A Correct.

Q And obviously, the date -- before I get too far in --

THE COURT: I don't understand. The correspondence is dated November 28, 2023, but the PIA is 11/14/22 date. Does that mean it was received a year prior to this response?

MR. ZACARIAS: Correct, correct.

THE WITNESS: Yes, sir.

THE COURT: Yes.

MR. ZACARIAS: Correct, Your Honor. And that is what my question is. I want to --

By MR. ZACARIAS:

Q Would you mind telling the Court, or shedding some light on why the -- about the timeframe from the request was received until the ultimate response that you have here in Exhibit L?

A Yes. Well, we had several requests from Mr. Holder during the timeframe. I believe I was working on seven at a time. And as we got them done, we responded to Mr. Holder.

I kept him abreast of our situation weekly, that we were working on things and the complexity of his requests, it just took time for us to get back to him with his data.

Q Approximately how many --- records did DNA collect and review in responding to this request?

A This one? Six thousand pages --

Q Approximately?

A -- approximately.

MR. HOLDER: Could you repeat that?

MR. ZACARIAS: Six thousand pages.

MR. HOLDER: Okay.

BY MR. ZACARIAS:

Q I am handing you what is being marked as Defense Exhibit M and Defense Exhibit N.

(The documents referred to was
marked for identification as
Defendant's Exhibit M and N.)

THE COURT: M as in Mike or N as in Nancy?

MR. HOLDER: Because I think we are on M.

THE COURT: I am on M.

MR. ZACARIAS: That is M. I just going to ----.

THE COURT: So, we are now discussing both Exhibit M and N.

MR. ZACARIAS: M and N. Yes.

THE COURT: Okay, go ahead.

MR. ZACARIAS: I will start with M, obviously because that is in alphabetical order.

BY MR. ZACARIAS:

Q Have you had a chance to review what has been labeled Exhibit M? Defense Exhibit M?

A Yes.

Q Could you describe what that is?

A This is a response from Mr. Holder. I sent him an email, giving him an update on the various PIA requests that I was working on for him.

Q Is 111422A among those that you are giving him an update on?

A Yes.

MR. ZACARIAS: Your Honor, I take a moment here just because there is some judicial notice that needs to be taken. And that is that -- I think we need to recognize that on January 8th, 2023, Mr. Holder filed his second amended complaint in this lawsuit.

And in paragraph 30 of the second amended complaint is where he added Request Number 111422A to this lawsuit.

THE COURT: Okay, noted.

MR. ZACARIAS: I just wanted you to take judicial notice of that.

THE COURT: Done.

BY MR. ZACARIAS:

Q At the time that this correspondence is taking place, has Mr. Holder filed suit regarding this PIA request?

A No. I'm sorry, yes.

Q Because the communication is January 15th and as we just discussed, January 8th is when he filed.

With respect to this PIA request, 111422A, it states that you -- if I am reading this correctly, the language that says, "I'm still working on the document conversion. This will be 20 to 30 days for completion." Is that your language?

A Yes.

Q The words after that, "This matter is *sub judice*. Thus, I will not discuss further." Whose language is that?

A That's from Mr. Holder.

Q What did you understand those words to mean?

A That he no longer wanted the information in the request.

Q At the time that Mr. Holder filed his second amended complaint on January 8th, was DNR in the process of collecting, reviewing, and searching for records?

A Yes.

Q Upon receiving this correspondence, what did you do?

A I stopped working on these particular ones and continued to work on his other ones.

Q Turning to Exhibit N, could you explain to the Court what that letter is?

(Pause)

THE WITNESS: This is a response to Mr. Holder for PIA Number 111422A. I reiterated his response in his letter and I provided him a download link so he can get his documents.

BY MR. ZACARIAS:

Q Was this all of the records that were responsive?

A It was a first batch of documents.

Q So, is it fair to say that you are responding to this request in two separate batches, or with two separate productions, one on October 25th and one on November 28th?

A Yes. If we have documents available for the customer and they are ready to go, we send them off regardless, even if it's not a complete batch.

Q Just for the record, that Exhibit N is an October 25th, 2023, letter from you to Mr. Holder referencing this PIA request, 111422A, correct?

A Correct.

MR. ZACARIAS: I would like to offer both Exhibits M and N into evidence.

THE COURT: They will be received.

(The documents marked for identification as Defendant's Exhibits M and N was received in evidence.)

THE COURT: And this seems like a good place to break. I do have a quick question for counsel. The table at the front of the volume you have given me runs through what you have references as 11C. I only through tab 9 so maybe there is more to come.

MR. ZACARIAS: Yes, sorry. I wasn't anticipating that to happen. We have actually ---- to eliminate exhibits and we are going to stop at around Exhibit 9.

THE COURT: Okay. No worries.

MR. ZACARIAS: So we are coming close to the end in terms of exhibits.

THE COURT: I will see you all back here at 1 -- I am going to give you until 1:45 because I have got a hearing -- I want to check the time real quick and make sure I am right. I believe I have a sentencing at 1:30. Does that sound right?

THE CLERK: Um-hum. Yes.

THE COURT: So, I have a sentencing in a criminal case at 1:30. So you all are welcome to come back at 1:30 or 1:45, whatever you prefer.

MR. ZACARIAS: Thank you, Your Honor.

THE COURT: All right. Have a good one.

THE CLERK: All rise.

(Whereupon, at 12:01 p.m., a luncheon recess was taken.)

A F T E R N O O N   S E S S I O N

(Whereupon, at 1:54 p.m., the proceedings resumed.)

THE COURT: Back to Case Number C-02-CV-22-1474. Mr. Holder, if you will just -- where did your attorney go? Oh, here he is. If you will state your name again for the record.

MR. HOLDER: Justin Holder, appearing in proper person, Your Honor. Good afternoon.

THE COURT: Hello. Counsel, if you will identify yourself one more time.

MR. ZACARIAS: Carl Zacarias, Assistant Attorney General, on behalf of Defendants, Department of Natural Resources and Anthony Burrows.

THE COURT: Sir, you can come back to the witness stand. I am going to remind you once again that you are still under oath from earlier today. Once you are seated, if you will just state your name again please.

THE WITNESS: Anthony Michael Burrows.

THE COURT: Thank you very much. All right, you may continue.

MR. HOLDER: May I have a seat, Your Honor?

THE COURT: Oh absolutely, yes.

MR. HOLDER: Thank you.

THE COURT: Thanks for asking.

MR. ZACARIAS: Bear with me, Your Honor. I am still sort of getting myself together here.

(Pause)

DIRECT EXAMINATION (Resumes)

BY MR. ZACARIAS:

Q Mr. Burrows, do you still have all the exhibits in front of you, paper exhibits?

A Yes.

Q I am going to -- very briefly, we left off talking about Request Number 111422A. I am going to bring you back very briefly to Exhibits L, M, and N, and specifically M and N. M as in Mary, N as in Nancy. Do you have those exhibits in front of you?

A I do.

Q Just to sort of sum up what we were talking about previously. Are Exhibits M and N -- do those reflect your communications and efforts to search for and produce records to this request during the time from when it was submitted until the time you ultimately produced in late November of 2023?

A Yes.

Q I would like to move onto the next request that is a subject of this litigation and I am going to hand you what is going to be marked as Defense Exhibit O.

BY MR. ZACARIAS:

Q Would you please identify what has been marked as

Defense Exhibit O?

A This is my response to Mr. Holder for Public Information Act Request 121122.

Q Is this an email dated January 20th, 2023?

A Yes.

Q And is the time 6:05 p.m.?

A Yes.

MR. ZACARIAS: I would like to offer Exhibit O into evidence.

THE COURT: It will be received.

(The document referred to was marked for identification as Defendant's Exhibit O and was received in evidence.)

(Pause)

BY MR. ZACARIAS:

Q I am going to draw your attention to the top of the exhibit. The part that is italicized and blocked, is that in keeping with what the other responses contain? Is that a recitation of the request that Mr. Holder submitted?

A Yes.

Q In this response, are there records attached to the response?

A Yes.

Q I want to note really quickly the timeframe here.

Am I correct by the number that the request was received December 11th, 2023?

A Yes.

Q And you are responding on Friday, January 20th -- Excuse me, I am sorry, strike that. On that last question, did the request get received December 11th, 2022?

A Yes.

Q And you are responding on January 20th, 2023, correct?

A Yes.

Q Sum up what these records are asking -- what this request is asking for.

A They were asking for emails and phone records.

Q With respect to the -- you have been over what you do with the emails. But with respect to the phone records, tell us what is involved with producing phone records.

A So phone records, we have the ability to collect call logs. We don't record phone conversations. There are two types of phone records we can collect.

One from desk phones in our building and one from cell phones and our various carriers, Verizon and AT&T, which are the carriers for our work phones.

Q Do you have the ability to collect those records totally on your own?

A I do not.

Q Could you explain what your answer?

A For the desk phone call log, we put a request into the Department of Information Technology. And for the Verizon and AT&T records, we put a request into the companies to have them supplied to us.

Q I want to draw your attention very quickly to the bottom of the exhibit. Can you briefly explain your response to this request?

A So I'm explaining the call logs that are available through the Department of Information Technology are only available for three months' timeframe.

Q Are you at the mercy of the Department of Information or Verizon in responding to this request?

A Yes, I am.

Q There is a part of the request that doesn't involve phone logs. How did you respond to that part of the request?

A We provided responsive documents.

Q I want to direct your attention to the -- that there were some personnel records involved with one set. Could you explain that?

(Pause)

BY MR. ZACARIAS:

Q It is the first bullet in the -- where he says, "The Department is ---- responsive records." Could you explain what is that real quick?

A So personnel records would have been something that were HR related or something along those lines.

Q And is your understanding that there is an exemption under the MPIA for personnel records?

A Yes.

Q And that the agencies are not supposed to produce personnel records?

A That's my understanding.

Q Am I correct that that citation to the General Provisions Article 4-311, that that is the citation to that provision?

A Yes.

Q To the exemption? I am going to move onto the last request that is a subject of this litigation. And I am going to hand to you what is going to be marked as Defense Exhibit P. Would you identify Defense Exhibit P?

A This is my response to Mr. Holder, and it is a two part request and a two part response.

Q Real quick. I notice on Exhibit P, there is no number listed on Exhibit P, is there?

A There is not.

Q If I could very briefly, do you still have Exhibit 1B with you? I am sorry, Exhibit B, Exhibit B. It will have possibly the Defense Exhibit label on the --

(Pause)

BY MR. ZACARIAS:

Q And once you locate that exhibit, would you mind finding on Exhibit B 121922.

A I have it.

Q Can you confirm that the letter that has been marked as Exhibit P is your response on behalf of DNR to Request Number 121922?

A Yes.

Q How do you know that?

A Well, I have a reference number here and it was also the request match up what I reiterated in his response.

MR. ZACARIAS: Your Honor, I would like to offer Exhibit P into evidence.

THE COURT: Exhibit P will be received.

(The document referred to was marked for identification as Defendant's Exhibit P and was received in evidence.)

BY MR. ZACARIAS:

Q Would you explain in your own words how you read Mr. Holder's request, starting with Request Number 1?

A Mr. Holder was asking for communications, emails, phone records between myself, the previous Public Information Act coordinator, and a member of our Attorney General's Office.

Q Real quick. So, the name here in the exhibit Talley Kovacs. Who is Talley Kovacs?

A She is one of our assistant AGs.

Q What was your response to that request for records here in Exhibit P?

A They were denied. ---- was denied.

Q Why was it denied?

A Attorney client.

Q How about Request Number 2 down here below? What was your response to that request? Actually, let's stop there. Explain in your own words first how you viewed the request and understand it.

A So, this request -- Mr. Holder had asked -- he had received some emails from us from previous requests. And in one of those emails, I had indicated at one point that I had asked one of our custodians to not at this time proceed with looking for document.

The situation as it was, was we were looking to just get some confirmation from the Attorney General's Office about how to move forward and that is why I had asked them to pause. It wasn't that I asked them not to do the work.

Q How did you ultimately respond to this part of the request?

A Well, we had no responsive documents in relation -- that related to Request Number 2.

Q Thank you. As of this date, has DNR responded to and produced records to all of Mr. Holder's requests that we have discussed here today?

A Yes.

Q Is DNR withholding any records in its custody that it has not asserted a privilege over or something other MPIA exemption?

A No.

Q Has Mr. Holder identified records that you know are within DNR's custody that DNR has not produced or asserted a privilege over?

A No.

Q Has your conduct relevant to these MPIA requests been for any other purpose other than responding to Mr. Holder's requests and providing records to him?

A No.

Q Was the conduct of any other DNR employee, same question. Was the conduct of any other DNA employee that you have been working with relevant to these requests for any other purpose other than responding to and producing records to Mr. Holder?

A No.

Q Was DNR's response and production of records influenced at all by Mr. Holder's filing of this lawsuit?

A No.

Q In your view, was there any need for Mr. Holder to file this lawsuit to compel DNR to respond and produce records?

A No.

Q For those requests that took longer than 30 days to respond and produce records, what do you attribute that to?

A To the complexity of the requests and the difficulty of managing multiple requests from Mr. Holder and his changing of those requests while trying to respond.

Q Approximately how many hours have you spent responding to Mr. Holder's requests?

A Thousands.

Q Approximately how many hours have the staff in the Land Acquisition and Planning unit spent responding to Mr. Holder's requests?

A Hundreds.

THE COURT: Excuse me for one minute. I am sorry.

(Pause)

THE COURT: I am sorry. You can continue.

BY MR. ZACARIAS:

Q I am going to repeat the question. Approximately how many hours have the staff in the Land Acquisition and Planning unit of DNR spent responding to Mr. Holder's requests?

A Hundreds.

Q Have other units in DNR, such as the Natural Resources Police and the Parks units, also spent substantial time responding to Mr. Holder's requests?

A Yes.

Q Have you ever charged a fee to Mr. Holder?

A We have a charged a fee for Mr. Holder. He did not pay that fee and we did not provide that -- for these, I'm sorry, no. Not for these.

THE COURT: Not for the ones that are at issue today.

THE WITNESS: Yes, sir, correct.

BY MR. ZACARIAS:

Q Have you charged a substantial amount?

A No.

Q How would you describe a substantial amount? Like less than $1,000?

A Less than $1,000.

Q Less than $500?

A Yes.

THE COURT: What is the fee for the photocopying? How do you determine a fee, just out of curiosity?

THE WITNESS: we determine a fee based on the hours it would take to produce the documents and the time spent by the people that do the work. And what we do is we take the hourly rate of the individual doing the work and we do an hourly rate based on that hourly rate.

THE COURT: Got it.

MR. ZACARIAS: And Your Honor, I will represent that the MPIA, that is how it instructs or needs to be calculated is by sort of a Human Resources hour.

THE COURT: Just curious. Okay.

BY MR. ZACARIAS:

Q Why haven't you charged fees to Mr. Holder for all of his requests?

A We generally don't charge fees. We try not to.

MR. ZACARIAS: Before resting, Your Honor, I think I am -- I will hold and wait for Mr. Holder to do his cross before I address the last thing, before the Defense rests in its case. So, I have no further questions.

THE COURT: Do you have questions for the witness, Mr. Holder?

MR. HOLDER: I do, Your Honor.

THE COURT: You may proceed.

MR. ZACARIAS: If you bear with me just a moment. Let me click out of here.

THE COURT: You are welcome to stand or remain seated, however you are comfortable.

MR. HOLDER: Since my document -- the Court wouldn't mind if I sit while I inquire?

THE COURT: I don't mind one bit.

MR. HOLDER: I appreciate that, Your Honor. I'm by myself and it's very helpful. Thank you.

THE COURT: Yes, of course.

CROSS-EXAMINATION

BY MR. HOLDER:

Q Good afternoon, Mr. Burrows. Your predecessor, Mr. Deems and you, yourself, Mr. Burrows, do you receive training in the Maryland Public Information Act before you and Mr. Deems had taken your positions?

A No.

Q Have you ever read the Maryland Public Information Act manual?

A Yes.

Q I'm handing you a copy of Chapter 4 of the Maryland Public Information Act manual. If I can approach? Thank you.

(Pause)

THE COURT: What is your question?

BY MR. HOLDER:

Q Can you -- have you read Chapter 4 of the Maryland Public Information Act manual?

A Yes.

Q Does Chapter 4 instruct you how to answer and respond to public information requests? Is it a general guide? Would that be fair?

A Yes.

Q Now, I'll direct your attention to the third page at Section C. After you've read that, is there any -- any statutory provision that allows you to answer a public information request after 30 days?

MR. ZACARIAS: Objection, Your Honor. It calls for a legal conclusion.

THE COURT: Sustained. Next question.

BY MR. HOLDER:

Q Do you see in the second paragraph under Item C, it talks about a 10 day letter?

A Yes.

Q How many 10 day letters has the DNR sent me pertaining to these requests at issue here? I believe they're in paragraph 49 of the complaint.

A I don't know the exact number.

Q Do you think -- if I said you didn't send any, do you think that's possible?

A I would say that I did keep you abreast of the situations that we were in with your PIA requests. I may not have sent you an official letter.

Q Did you ever call me by telephone?

A No, sir. I do not call people on the telephone?

Q Did you ever text me?

A I do not. I emailed you.

Q Email is the only way we would have communicated?

A Yes, sir.

Q Had you ever sent me an email within 10 days of my requests that are at issue in this case? Has DNR ever done that?

A I sent you an email for every case when I initially received it.

Q After that email that you received it, had you ever sent an email in 10 days explaining why it may take more time or how the records are kept or asking questions to potentially narrow or retarget my public information requests so I could understand how your records were kept?

Did we have any of those discussions?

A Yes, we did.

Q Can you describe a few of them?

A I believe -- I can't remember the numbers particularly, but I do remember a case specifically where you sent in a very complex request and I worked with you, in the spirit of the Sunshine Act, to word the request a little bit better so we could provide it to you quicker and more efficiently.

Q Do you think that would be a request concerning sewer and water communications received on -- I'm sorry. I don't want to ask you about something that you don't have that information.

A Well, you've had several requests for sewer and water communications.

Q I'm going to hand you what I've marked as Plaintiff's Exhibit A.

THE COURT: One. You use numbers.

BY MR. HOLDER:

Q Plaintiff's Exhibit 1.

(The document referred to was marked for identification as Plaintiff's Exhibit 1.)

MR. HOLDER: Would Your Honor like a copy?

THE COURT: Sure. Thank you.

BY MR. HOLDER:

Q Did I make a request on November 21st, 2022, for certain sewer and water communications in Keedysville that's not part of this complaint?

MR. ZACARIAS: Your Honor, I am just going to lodge an objection to say that I do want to allow Mr. Holder a little bit a leeway here. But the request number that is the subject to this exhibit is not among the requests that are in the amended complaint.

THE COURT: They are not part of the third amended complaint?

MR. ZACARIAS: Correct, Your Honor. I will give him a little leeway but there comes a point where I am going to challenge relevancy here.

THE COURT: So that is not an objection at this point.

MR. ZACARIAS: Not at this point.

THE COURT: It is a head's up.

MR. HOLDER: Okay.

THE COURT: You understand we are going forward on, just so you are clear, the third amended complaint.

MR. HOLDER: I do, Your Honor.

THE COURT: That is the active complaint that we dealing with. But you go ahead.

MR. HOLDER: I was just bringing up -- Mr. Burrows talked about it, a time where --

THE COURT: Ask your next question.

BY MR. HOLDER:

Q Are you familiar with the November 21st, 2022, MPIA request?

A November 21st?

Q Yes. I believe --

A I've ---- it, yes.

Q Is that the request you were talking about where we worked in good faith to resolve the PIA, narrowed the scope?

A That was one, yes.

Q That was one of them? Okay.

A Yes, sir.

Q Did I file suit on that one?

A You did not.

MR. HOLDER: I would move to admit Plaintiff's Exhibit 1.

MR. ZACARIAS: I am going to object because I don't understand the relevancy to this other requests.

THE COURT: I am going to sustain the objection.

MR. HOLDER: Okay.

THE COURT: The testimony that Mr. Burrows offered did come in though. I did hear what he said. So next question.

MR. HOLDER: Okay.

BY MR. HOLDER:

Q So you said you sent me weekly letters and they would have all been by email?

A Yes.

Q When did that start and when did that end?

A I don't have exact dates, but I would say roughly in the fall of 2022 through the spring of 2023.

Q Do you think you sent me an email every week?

A I sent you an email weekly for quite some time. I don't have exact numbers.

Q If I was to ask for emails to prove that you sent them, how many emails do you think you would be able to provide to me?

MR. ZACARIAS: Objection, Your Honor.

THE COURT: Sustained. Next question.

BY MR. HOLDER:

Q Did Mr. Deems ever send me weekly updates on MPIAs?

A I don't know.

Q I believe you said you had generally two types of records I would ask for -- I'm kind of jumping around. I don't mean to rattle you -- unit records or email correspondence. And typically, when it was email correspondence, would you say that those requests were resolved a lot more expediently than the unit requests?

A It would depend on the type of email requests.

Q What was the longest email request that it took to resolve that you're aware of?

MR. ZACARIAS: Objection, Your Honor. I just don't quite follow the question.

THE COURT: Sustained.

MR. HOLDER: Let me ask it a different way.

BY MR. HOLDER:

Q How long does it typically take for us to resolve an email request? Were they all over 30 days, or were some of them resolved prior to 30 days?

A Some were resolved prior to 30 days.

Q And did I file suit on any of those requests that resolved prior to 30 days?

MR. ZACARIAS: Objection.

THE COURT: Sustained.

BY MR. HOLDER:

Q Have you ever explained to me, Mr. Holder, the Plaintiff in this case, how your email query works? Have you sent an email and said, "Hey, this is how my query works. This is how I put the information in." Have you ever given me that information?

A No.

Q Have you ever explained to me prior to today that there's two types of records request? One's an email request, one's a unit request. I have to go to, you know, these are kept in paper form. Have you ever --

A No.

Q Would it be fair to say, I have no idea how DNR keeps its records? That you've never been aware --

MR. ZACARIAS: Objection. Objection, Your Honor.

THE COURT: Sustained.

MR. HOLDER: I'm sorry. I know I don't have a foundation. I'm just trying to expedite.

THE COURT: I don't know that ---- allowed to answer but I don't know that this witness can explain what you know or don't know. So that may have to come from you.

MR. HOLDER: I agree. Okay.

THE COURT: Okay? So that is why I sustained the objection.

BY MR. HOLDER:

Q Has DNR ever made me aware of how it keeps its records?

A No.

Q When you talked about the email query with the enterprise system and Google and the results it results as EML files on the right hands column, mailboxes on the left hand column. Are you familiar with that testimony?

A Yes.

Q Have you ever offered to just send me EML files?

A No.

Q Why would just sending me the EML files not be sufficient? Have I ever told you I couldn't accept those as public records?

A I can't send you EML files because they need to be reviewed before I send them to you. And our reviewers can't read EML files so they have to be converted.

Q So it's an internal process, the idea that -- apparently when you say reviewers, you mean the attorney general?

A And the unit. The custodians.

Q And the unit. So the custodians have no way of reading EML files?

A No.

Q It sounded like you were a pretty technical, like savvy guy. You use Adobe software frequently?

A Yes.

Q Do you ever use Python scripts?

A No.

Q Do you guys ever use any, like ChatGPT or AI in searching document?

A No.

Q You talked about sociological data. Is somebody's address on their tax bill private, or is it a public record?

A If it's a home address, it's sociological information.

Q It's not a public record?

MR. ZACARIAS: I am going to object to the phrasing of the question.

THE COURT: Sustained. Next question please.

MR. HOLDER: Yes, Your Honor.

BY MR. HOLDER:

Q I'm going to move back to the requests from July 1st of 2020. I sort of look at that as one of our first interactions under the Public Information Act.

And then we went into mediation and you said we came out -- there was potentially a disagreement on what was agreed on. And I raised that issue and I asked for the request again and continued to pursue it.

You asked certain people for records. Did you ever ask anybody in Project Open Space for records related to the July 1st, 2020 request?

A I did not.

Q Does Jeannie Lippert* work in Program Open Space?

A I don't know. She's not my custodian.

Q Does the DNR know where Jeannie Lippert is employed?

A I don't know.

MR. ZACARIAS: Your Honor, I just want to object for a second that that question is beyond the scope of what he was designated for speaking about. So DNR not bound by that answer.

THE COURT: Noted.

BY MR. HOLDER:

Q Do you know if Jeannie Lippert -- is it Lippert or Lipert, Mister --

A I don't know.

Q Do you know a Jeannie Lippert?

A I do know the name.

Q Do you know that name to be an employee at DNR?

A Yes.

Q Did you, as custodian in receipt of my request, ask anyone at DNR, "Do we know where Jeannie Lippert works?" Have you ever asked that question?

A I did not ask that question.

Q Do you know who Mary Ironside is?

A Yes.

Q Does she work at DNR?

A Yes.

Q Do you know what department at DNR she works at?

A Yes.

Q What department does Mary Ironside work in?

A She works for the Maryland Parks Service.

Q Would that be the division you consider as Parks?

A Yes.

Q Did you ask Mary Ironside if she had any agreements with Holly Nicodemus to put a fence across the railroad? Did you ask Mary for those agreements?

A If that was part of one of your requests, I asked the Parks custodian for that information.

Q Do you know if Parks checked with Mary Ironside for those types of agreements?

A I don't know.

Q Did a lot of my searches include the term "and/or" in them?

A Yes.

Q Did you ever inform me that my searches were creating too broad of results or narrow results?

A No. My goal was to provide you with the documents you asked for.

(Pause)

BY MR. HOLDER:

Q Did you receive a public information request on September 24th on your Google forms from Justin Holder?

A What year?

Q 2020. I'm sorry about that.

A I did not but I can see if it's on the record.

(Pause)

THE WITNESS: According to our log, I do not have an 072420. But if we cross reference what you've given me, my log -- I see no record of this request.

MR. ZACARIAS: Your Honor, I am going to object because, unless Mr. Holder makes a proffer that this relates to one of the requests that is in the third amended complaint, I am going to challenge this whole line of questioning and the exhibit on relevancy grounds.

MR. HOLDER: I didn't move to admit it yet, Your Honor.

THE COURT: That is correct.

MR. ZACARIAS: But the line of questioning --

THE COURT: Yes. You will have to wait for the next question and I guess object at that point.

MR. ZACARIAS: Okay.

THE COURT: Remember, we are focusing in on third amended complaint. That is what is the active complaint before me. Just a gentle reminder.

MR. HOLDER: I know I gotta -- I'm getting there. I promise you.

THE COURT: Okay.

MR. HOLDER: Without having all the witness's foundation, it's a little difficult. This is what I'm going to mark as Plaintiff's Exhibit 3.

(The document referred to was marked for identification as Plaintiff's Exhibit 3.)

THE COURT: Thank you.

MR. HOLDER: Thank you, sir.

THE COURT: This is 3?

MR. HOLDER: This is 3, sir.

BY MR. HOLDER:

Q Do you have a log of a public information from Justin Holder to Department of Natural Resources on May 18th of 2021?

(Pause)

THE WITNESS: Yes.

BY MR. HOLDER:

Q Would the second and third page of the Plaintiff's Exhibit 3 accurately reflect the communications regarding that public information request of May 18th of 2021?

MR. ZACARIAS: Objection, Your Honor. The request that is the subject of this exhibit and the subject of the question is none of the request numbers that is in the third amended complaint.

THE COURT: Do you want to say something?

MR. HOLDER: Yeah. Your Honor, while the DNR characterizes these as separate requests, I intend to prove that I've made these requests for years.

They've been either unresponded to, not responded to. They're continuing in nature. And these are just reiterations of the same request in order to obtain my documents. So that's what I'm --

THE COURT: This request is not referenced in your third amended complaint, correct?

MR. HOLDER: Well it is because it's -- they're sticking me with their numbers.

THE COURT: But it is your third amended complaint that you drafted.

MR. HOLDER: It is.

THE COURT: So, unless this is related directly to your third amended complaint, I am going to have to ask you to move on.

MR. HOLDER: I believe it's directly related.

THE COURT: How is this related?

MR. HOLDER: It's the same document. It's the same documents that I've been asking for. They told me there was no responsive records.

THE COURT: Show me where in the third amended complaint this specific document is raised. Tell me where. I have a copy of it right in front of me. I printed a copy for myself.

MR. HOLDER: If you just please give me a second to review the complaint.

THE COURT: Yes, sir. Unless counsel -- you are saying it is not part of the third amended complaint.

MR. ZACARIAS: That is my objection, Your Honor.

THE COURT: No, no. I just wanted to make sure I understood your objection.

MR. HOLDER: It's in paragraphs, generally, 50 through 54 that, where we've crystalized the policy that I have to continually ask. I have to go to court.

I have to press the issue of the Public Information Act and go through a process that I'm going to just call dragging and drag these documents that should be given to me out of the State's hands. And that's what I intend to prove today, that this is what it takes.

They would have never given me these documents had I not filed suit. And this email is directly germane to that fact. That fact's important. It's important in substantial compliance. It's important in the reasonableness, in the motive and intent in their search.

THE COURT: Okay. I am going to overrule objection.

I will give you a little bit of latitude but again, you are still confined to that third amended complaint.

MR. HOLDER: I agree that I'm confined to the third amended complaint. I'm not challenging ---.

THE COURT: I agree with you.

MR. HOLDER: Okay.

THE COURT: Okay? You can proceed. The objection is overruled.

BY MR. HOLDER:

Q Would any of the documents that you've arrived as 6,000 documents you talked about in providing, I believe it was November 26th, 2022.

It would have been Exhibit -- looks like Defendant's Exhibit N and also Defendant's -- well, in Defendant's Exhibit N, you provided the documents responsive to an 111422A PIA. Would any of those have been responsive to that May 18th public information request?

MR. ZACARIAS: Objection. Without having the ability to look through the thousands of pages that have been produced, he can't possibly answer that question.

THE COURT: I am going to give you the chance. You will have the opportunity to testify and tell me your side.

MR. HOLDER: Okay.

THE COURT: Again, they provided you, if I understand correctly, thousands of documents. I think it would be challenging. I mean, if he can answer, let him answer. If he says, "I don't know," I am going to stick with the "I don't know." Are you able to answer that?

THE WITNESS: I --

THE COURT: No, you are not able to answer that?

THE WITNESS: No.

THE COURT: Given the -- I don't want to put words in your mouth -- given the fact that there are just numerous documents --

THE WITNESS: Yes, correct.

THE COURT: Next question.

MR. HOLDER: That's all I need, Your Honor. "I don't know" is fine. That is fine.

THE COURT: Okay.

BY MR. HOLDER:

Q Why did the DNR, on December 18th, 2020, when they provided a responsive production to the July 1st, 2020, MPIA you have designated as 070120 in this matter, why did they label it as a draft production?

A I don't know. I did not send that email. I don't know.

Q Did you ask anybody at DNR?

A That was before I was the Public Information Act coordinator.

Q When you went to -- the time where we came out of mediation and then me and you -- you testified about it earlier.

We began to interact, being Justin Holder and Anthony Burrows, as Public Information Act, and I believe you may have referenced in -- it would have been in the responsive emails to the 07302022 request. Are you familiar with that request?

A Yes.

Q You referenced talking to Mr. Deems. Did you not talk to him about why it was a draft?

A I did not.

MR. ZACARIAS: I am going to object to the use of the word "draft." There is no foundation for that question right now.

THE COURT: I am going to overrule the objection. The answer is no.

BY MR. HOLDER:

Q How many times did I have to ask the DNR for an answer to the 070120 request prior to December 18th and being provided those documents?

MR. ZACARIAS: I am going to just object to the form of the question.

THE COURT: Sustained.

BY MR. HOLDER:

Q How many emails from Justin Holder did DNR receive inquiring when 070120 PIA answer would be provided to him?

A I don't know that number.

MR. HOLDER: I'm going to move to admit Plaintiff's Number 3. Mr. Burrows testified about it being responsive.

THE COURT: 3 will be received.

(The document marked for identification as Plaintiff's Exhibit 3 was received in evidence.)

MR. HOLDER: I would like to have this marked as Plaintiff's Exhibit 4. I have an extra copy for you --

(The document referred to was marked for identification as Plaintiff's Exhibit 4.)

(The Court, counsel, and Plaintiff talking over each other.)

THE COURT: I can just take that one. That is fine.

MR. HOLDER: I appreciate it. I think I have another copy.

THE COURT: We are good. I have it in my hand now. You can go ahead with your question.

BY MR. HOLDER:

Q I believe you testified earlier that I wasn't -- the DNR provided me -- and when I say DNR, Mr. Deems, your predecessor provided me with the December 18th answer.

And I believe your testimony -- I didn't provide DNR with any further elaboration, any further information about what documents I was seeking or why I thought the response was deficient. Is that a correct characterization of your testimony?

MR. ZACARIAS: Objection. If he could rephrase that. I couldn't follow any of that.

THE COURT: Yes. It is a little confusing to me too. If you could just try to rephrase the question, see where we go from there.

MR. HOLDER: I know. I'm trying to expedite but I -- the foundation --

THE COURT: You are fine. You can either skip over it or if you want to try to rephrase it, you are welcome to.

BY MR. HOLDER:

Q The DNR provided me a response to 0701 it believes was complete on December 18th, 2020. Is that correct?

A Yes.

Q Did the DNR receive any further communications from Justin Holder challenging the sufficiency of that response, citing legal authority, or any other means of why I thought there would be more documents responsive?

A Yes.

Q Is Plaintiff's Exhibit 4, is that those communications that we discussed, the deficiencies that we were talking about, myself and DNR, as in myself, Justin Holder, and DNR about the deficiencies in the 12/18/2020 response?

MR. ZACARIAS: I would just ask to give him a minute. The exhibit is pretty big. He would have to review the exhibit.

THE COURT: Do you have a copy of Exhibit 4 there?

THE WITNESS: I do, yes.

THE COURT: If you would just take a look at that.

THE WITNESS: Mr. Holder, you said 12/18/2020?

BY MR. HOLDER:

Q 2020, yeah. Well, it would have been the 070120 that was produced -- yeah.

A Please. Your question one more time.

Q I was just asking if Exhibit 4 is a true and accurate copy of the emails where we were talking about the deficiencies that I believed, I alleged and DNR was addressing those.

A These look to be that. Again, I was not the Public Information Act coordinator in 2020.

Q I will say the last eight pages -- I'm sorry, nine pages would be actually part of the exhibit that -- that begins that there's an email that has eight pages in it, and it says "Draft Public Information Act Request." That's the page I'm at. Do you see that?

(Pause)

THE WITNESS: Okay.

BY MR. HOLDER:

Q Be it Friday, December 18th, 2020 at 1:25 email?

A I see it.

Q That email was sent from DNR to Justin Holder.

A Yes.

Q The subject is Draft: Public Information Act Requests. Then it lists five different requests.

A Yes.

Q Why did DNR use the word Draft?

A Again, I don't know. I was not the Public Information Act coordinator in 2020.

Q Is it typical that you use the word Draft and draft a response to a PIA? Does that happen a lot?

A I do not use the word Draft.

Q Never talked to Mr. Deems again about why he would have used the word Draft? I might have asked you that.

A You did. I have not.

MR. HOLDER: Move to admit Plaintiff's Exhibit 4.

THE COURT: 4 will be received.

(The document marked for identification as Plaintiff's Exhibit 4 was received in evidence.)

BY MR. HOLDER:

Q Paragraph 49 in the amended complaint lists the Public Information Act numbers that DNR provided and are at issue in this request. Were any of those documents provided within 30 days of receiving the request?

A I would have to look at my sheet.

THE COURT: Does he have a --

MR. ZACARIAS: I am just going to object to ask, does he understand the question.

THE COURT: Well, yes and no.

MR. ZACARIAS: I am going to object. I don't --

THE COURT: He didn't say he doesn't understand but it might easier if you showed a copy of paragraph 49 so that he knew exactly what you were referring to. Or you can use my copy if you want, sir.

MR. HOLDER: He can use my computer.

THE COURT: That is fine.

BY MR. HOLDER:

Q Mr. Burrow, I'm going to place my MacBook -- are you familiar with the MacBook?

A Yes, sir.

Q You can use that. That's paragraph 49 of the third amended complaint, I'll represent to you.

THE COURT: That at least gives him a reference for what it is you are asking, so I think, I think that might be of some help.

MR. HOLDER: Absolutely. Absolutely. I had to do this in another case and I was on the stand and we had piles of documents and it was a little bit cumbersome, so I don't mean to do that. It's a lot.

THE COURT: Was it another Public Information Act case, or something else altogether?

Mr. HOLDER: It was another Public Information Act case.

THE COURT: I was afraid to ask. Here or elsewhere?

MR. HOLDER: In Washington County. Judge Jordan, very good judge. Very nice man. Great on evidence.

THE COURT: What do you do for a living?

MR. HOLDER: I'm an automotive mechanic.

THE COURT: Okay.

MR. HOLDER: And I like to look at documents.

THE WITNESS: 52422 was completed within 30 days.

BY MR. HOLDER:

Q Within 30 days? Okay. The others were not?

A Correct.

THE COURT: Have they been completed though?

THE WITNESS: They are complete.

THE COURT: Just not -- one was within the 30 day window. The others were not.

THE WITNESS: Yes, sir.

THE COURT: Okay. And you have already explained the challenges that you faced. I mean, I accept that. Next question.

BY MR. HOLDER:

Q On my laptop, can you go to my desktop?

THE COURT: No, no, no, no, no, no, no. We are not doing all that. Just ask your question.

BY MR. HOLDER:

Q Mr. Burrows, you said that when you made a request to the units, they would scan in paper copies of documents?

A Yes.

Q Would it be your understanding that when they scanned those documents in, the date stamp would represent the time that they were -- when I say "date stamp," I mean metadata date stamp in Adobe or whatever PDF view you're using. Are you familiar with the term, "date stamp?"

A I am but I don't know if that's the case with their scanning software.

Q Is it possible that there would be a date prior to the date that these paper records were scanned in, as the metadata date for that's the compromise of the PDF file?

A I don't understand that question.

Q So, just to explain the process. You take a piece of paper. You put it in a Xerox or a photocopier, some type of machine, right? And it puts a light on it. It scans in a document. And it creates an electronic file.

And in that file there is something we call metadata. Are you familiar with metadata?

A I am.

Q That metadata may contain a date. Are you aware of any way possible that the date that's contained in the metadata would be prior to the date that that document was put in an electronic machine and scanned?

A I'm not aware of how that could be possible.

Q So if I represented to you that the documents that were responsive to the 11142022A request had a metadata date stamp of December 21st, 2022, would you argue with me?

MR. ZACARIAS: Objection. If he has something like that --

THE COURT: Sustained.

MR. HOLDER: That's what I was going to have him testify to with my laptop. He could look at them and inspect them.

MR. ZACARIAS: Your Honor, I am going to object to that.

THE COURT: Maybe you --

MR. ZACARIAS: He has an obligation to create exhibits.

THE COURT: I understand. I am going to sustain the objection.

MR. HOLDER: I understand.

THE COURT: There may come a time where that will come into evidence, maybe through your testimony.

BY MR. HOLDER:

Q Did you hold the documents from December 21st, 2022A that were responsive to PIA Request 111420222 for almost 10 months prior to giving them to me?

A No.

Q Were they being reviewed for 10 months?

A Which one?

Q The responsive documents that you provided on, I believe it was November 26th of 2023.

A For which PIA?

Q I'm talking about PIA 11142022A, the railbank PIA.

A I never held documents. If we have documents that are ready to be released, they are released to the customer, even if it's a partial release.

(Pause)

BY MR. HOLDER:

Q I hand a document I've labeled as Plaintiff's 5. It is a Department of General Services agenda. Is that one of the documents that you produced to me in response to the November 14th, 2022A railbank public information request?

A It could have been.

(The document referred to was

marked for identification as
Plaintiff's Exhibit 5.)

BY MR. HOLDER:

Q Plaintiff's Exhibit 6, is that also a document that you would have produced to me in response to the 11142022A railbanking MPIA?

A It could have been.

(The document referred to was
marked for identification as
Plaintiff's Exhibit 6.)

BY MR. HOLDER:

Q Is there a date stamp on Plaintiff's Exhibit 6 anywhere?

A Is the BPW agenda 6 or is it 5?

Q 6 is the directive on railbanking, rail-trails.

A I do see a date on that, yes.

Q What's the date on that?

A It's March 10th, 1993.

Q Is there a date on Plaintiff's Exhibit 5?

A Yes.

Q Is there a highlighted footnote on Plaintiff's Exhibit 5, a highlighted agenda item?

A Yes.

Q Could you read that for the record?

A "Successors of title may have a reverter interest in the subject property and the Department may have caused a deal with settling these land disputes at a further date as they are disclosed."

Q On Plaintiff's Exhibit 1 -- I'm going to go back to that. That's the September 24th email. And the second page of that, there's a Google form.

A Yes.

Q And at the bottom, that Google form, it references a 1983 rail-trail agreement. Rail-trail law.

A Yes.

Q On Plaintiff's Exhibit 6, is there a Section 2B that -- and Section 6 is the advisement on railbanking. Is there a reference to a 1983 Federal statute for railbanking railroads?

MR. ZACARIAS: Now, Your Honor, I am going to object just because I think he has gone really far. I tried to cut him some slack but I am failing to see any relevance, and I think he is trying to try his case that this is his property. And this has nothing to do with the MPIA requests.

MR. HOLDER: No, I'm not doing that, Your Honor. It just a public --

THE COURT: What are you doing then?

MR. HOLDER: I'm establishing the public interest in the documents, Your Honor.

THE COURT: No. I am going to sustain the objection.

MR. HOLDER: Okay.

THE COURT: We are just getting too far.

MR. HOLDER: Can I admit 5 and 6 as key documents received in response to the PIA?

MR. ZACARIAS: Only because Mr. Burrows stated that these could have been produced pursuant to one of the requests, I will reserve an objection for that reason.

I just want to make sure the record is clear that DNR isn't, for purposes of this proceeding or any other proceeding, taking any position or acknowledging or admitting anything and we are reserving all rights as it relates to these documents.

THE COURT: Okay.

MR. HOLDER: ---- a real property case, Your Honor.

THE COURT: 5 and 6 are received.

(The documents marked for identification as Plaintiff's Exhibits 5 and 6 were received in evidence.)

MR. HOLDER: Okay, thank you.

THE COURT: You bet.

BY MR. HOLDER:

Q In reading my requests over time, were you fairly familiar with the subject matter of my requests?

A Yes.

Q On the May 18th request, which was part of Plaintiff's Exhibit 3, I was asking for railbanking agreements again there, correct?

A I believe so, yes.

Q Your response to Plaintiff's Exhibit 3 was there was no responsive documents?

MR. ZACARIAS: Objection, Your Honor. Plaintiff's Exhibit 3, that is not what that reflects at all.

MR. HOLDER: It's not the 518 email?

MR. ZACARIAS: You are referring to --

THE COURT: You are referring to your Exhibit Number 3?

MR. HOLDER: Yeah, Plaintiff's Exhibit Number 3, which would have been a 518 request. It was admitted into evidence.

MR. ZACARIAS: Then I am going to object to the question because, again, relevancy. The 518 request is not what is at issue here.

THE COURT: All right.

MR. HOLDER: Not anything at issue. Just showing that I had to broaden -- why I had to broaden these requests. Ask for the same thing on May 18th, was told, "We don't have any documents." I broaden up the request. I finally get 6,000 documents.

THE COURT: All right. I will sustain the objection.

BY MR. HOLDER:

Q Did you ever me on the November 14, 2022A request to retarget my search to limit or narrow that search?

A What request are you referring again?

Q I'll call it the railbanking but it's the 11142022A, your number, request.

A One moment please.

(Pause)

THE WITNESS: I don't recall asking you to narrow that request.

BY MR. HOLDER:

Q I believe you testified that you sent an email after, sometime after the third amended complaint was filed and you took the response I made that I didn't want the documents. Are you aware of what the term "*sub judice*" means?

A I don't.

Q Did you ask anybody? Did you look on Google?

A I did not.

Q Did you read the third amended complaint when I filed it?

A I did.

Q Were you aware in the third amended complaint I was asking for the documents and suing for that request?

A No, I wasn't aware of that.

Q Is the 1114 request part of the third amended complaint that you know of? Would you like to read it again?

A Yes. I mean, I believe it's part of the complaint, yes.

Q Okay.

A I'm sorry. Hold on. No -- yes, it is part of the complaint, yes.

Q So you read the complaint, you saw the 11142022A request was part of the complaint. I send you an email back. I tell you it's *sub judice*. I don't want to discuss it. You didn't ask anybody. But you inferred that I just didn't want those documents anymore? Is that --

THE COURT: Doesn't *sub judice* mean that it is sort of under the Court's --

MR. HOLDER: I read --

THE COURT: -- supe -- I am talking. Sorry -- supervision at that point? Meaning you have moved it to the courts so you are not asking him to respond and you are not responding.

MR. HOLDER: That's correct.

THE COURT: Okay.

MR. HOLDER: Speaks in real pleadings, Your Honor.

THE COURT: I have a question. So, Mr. Holder, I am going to tell you that this case is set for one day. You each get half. I recognize that you lost an hour because I had to set in an emergency hearing this morning. That obviously won't not be held against anyone.

And then another 20 minutes or so when I did the sentencing. But you each get three hours so just use your time wisely.

MR. HOLDER: Understood, Your Honor. I appreciate the guidance here and I'm going to -- like I said, I'm trying to expedite here.

(Pause)

BY MR. HOLDER:

Q I’m going to talk about DNR's answer to the complaint. Are you familiar with the answer you provided in this complaint?

A What are you referring to?

Q When I say the answer, there's a complaint then there's an actual answer to the complaint and number paragraphs.

A I'm not familiar with the answer.

Q Is the DNR familiar with the answer?

MR. ZACARIAS: I am going to object to the question. The answer is usually submitted by --

THE COURT: I am going to sustain the objection. Just ask whatever your question is. Whether he is familiar with it or not.

BY MR. HOLDER:

Q Complaint Number 5763. It's paragraph 63. It says, "DNR just out knowledge of the records." And I'm going to allow you to use my computer again to read the complaint at paragraphs 57 through 63.

MR. ZACARIAS: And for the record, which complaint?

MR. HOLDER: Third amended complaint. The operative complaint. When I say "the complaint," I mean the operative complaint.

(Pause)

BY MR. HOLDER:

Q If you want to read the paragraph out loud and just explain what knowledge you may have about that.

A "On March 14th, 2015, Department of Natural Resources Park Ranger Mary Ironside wrote a letter to Miss Holly Nicodemus, alleging on March 11th, 2015, South Mountain Recreation management staff inspected the State owned Weverton-Roxbury rail corridor, which is adjacent to your property at 4407 Trego Road, Keedysville, Maryland, 21756, and demanding this letter serves as formal notice that the illegal private use of the public lands adjacent to the property must cease March 14th, 2025 record."

"On May 15th, 2015, Carl W. Disk*, agent for Holly Nicodemus --"

MR. ZACARIAS: Wait. You can stop there. You just said 57.

THE WITNESS: Oh.

BY MR. HOLDER:

Q Yeah and -- so DNR has no knowledge of that letter? Is that correct?

MR. ZACARIAS: Objection. He has been designated to speak on behalf of DNR with respect to responding to the request, not with respect to the knowledge of the situation and the documents that may be related to it.

THE COURT: I will sustain the objection. Next question please.

BY MR. HOLDER:

Q Did I make a request for documents related to agreements from property owners to maintain fencing on the rail corridor on July 1st, 2020? Is that part of that request?

A Which request?

Q The 070120 request.

A Yes.

Q Would having a fence -- would Holly Nicodemus's fence be one of those agreements that DNR has made to allow Holly Nicodemus to maintain a fence across the railroad, the trail?

MR. ZACARIAS: I am going to object to that, that he testified he relies on the unit coordinators to make that determination. He can't answer that question.

THE COURT: Sustained.

BY MR. HOLDER:

Q You testified earlier you didn't look for any of those records. You didn't ask anybody, ask Mary Ironside about any of those records, about fencing across the DNR railroad in your search.

A I did not.

Q You also answered the complaint as well. You're a Defendant in this case. You answered the complaint?

(Pause)

BY MR. HOLDER:

Q Are you aware of civil process where you get served a complaint and then after a certain time, you have to answer it? In numbered pleadings similar to how the complaint is written.

A I don't think I understand your question.

MR. ZACARIAS: Your Honor, I am going to ask for a proffer of relevancy.

THE COURT: Sustain the objection. Sustained.

MR. ZACARIAS: Thank you.

(Pause)

BY MR. HOLDER:

Q Paragraph 58. And I'm going to ask you personally, not as DNR corporate designee. You personally. Do you have any knowledge about the information that is discussed in paragraph 58?

A Your screen's locked.

Q Oh, I'm sorry.

(Pause)

THE WITNESS: Would you like me to read it again?

BY MR. HOLDER:

Q Please, for the record.

A "On May 15th, 2015, Carl W. Disk, agent for Holly Nicodemus wrote a letter to Ranger Mary Ironside of MD DNR stating, 'Until the State provides conclusive title proof that it owns fee simple record title to the property in question and which property my client in turn claims to own in fee simple, as previously discussed above, my client will not acquiesce in the requested removal of her fence.' The May 15, 2020 record."

Q Did you personally ask anybody to search for those records?

A I did not.

Q Do you know if anybody at DNR searched for those records?

A I give all requests to the unit coordinators and they do the research.

Q What unit coordinator would you have given that request to?

A That was part of a larger request and I gave that to Land Acquisition and Planning.

Q Okay.

A Actually -- excuse me. Let me clarify. I gave this particular request to Land Acquisition and Planning and to Parks, and I said, "This cover both areas. Please review this request."

Q Was your follow up to Parks, did that come after the suit was filed there September 17th? I asked you for the communications, the 7302022 email communications. Did that -- you had discus -- And I'm sorry. I'll go back.

You had discussed a time that I -- in the mock emails. I'm sorry for going all over this, Your Honor. Let me just -- just strike that. I'm going to slow down here a little bit because I know we're familiar with this and that we aren't so in --

Let's see. It's going to be Defendant's Exhibit P and that is the Talley Kovacs request that you answered on May 17th, 2023.

THE COURT: What is your question regarding that, sir?

MR. HOLDER: What's that?

THE COURT: What is your question?

MR. HOLDER: My question is, did he ask Parks to search for that document before or after suit was filed.

MR. ZACARIAS: I am going to object. This is facts not in evidence. This exhibit does not relate at all to that document that he is referring to. This is the exhibit that related to attorney client communications with Ms. Talley Kovacs --

THE COURT: Were they denied access?

MR. ZACARIAS: That was denied completely. But that aspect of it was denied.

THE COURT: How does that come into evidence?

MR. HOLDER: Not asking.

THE COURT: Well, I still don't understand your question.

MR. HOLDER: I'm just trying to build a foundation for the question I'm asking him, Your Honor.

THE COURT: Go right to your question.

BY MR. HOLDER:

Q So, your testimony was that we came out of mediation. I'm asking you for agreements between landowners such as one for Holly Nicodemus to maintain a fence across the railroad. And then I asked you for your communications.

I guess you kind of described it as checking up on you, making sure you do your job. In those communications, you had said, "Hey, let's talk to the Attorney General's Office." Or somebody said, "Hey, talk to the Attorney General's office." You told somebody in Parks to hold off.

I'm asking you after, after you provided those communications, which September 19th, something like that, 2022, did you go back to Parks and ask them again, "Do you have any agreements between Holly Nicodemus and Parks?" specifically? Did you ask them for that specific document?

MR. ZACARIAS: Your Honor, I am going to object to that very long question. The fact that there is so much attorney client privilege if he is referring to this Exhibit P. I just can't understand the question.

THE COURT: I am going to overrule the objection if he recalls if he asked for that specific information.

THE WITNESS: One second.

(Pause)

THE WITNESS: When I replied to you -- I don't have it in front of me, but I believe I referenced the documents that we had provided you previously and said that we had given you all the documents that we had.

And the reason I did that is because I asked Parks and LAP to review those documents after we had consulted with the AG's Office.

BY MR. HOLDER:

Q Did you ask Parks specifically, "Do you have an agreement with Holly Nicodemus?"

A I gave them the request that you sent to me. I don't parse out pieces of requests and ask people for specific parts of requests.

Q Since I filed suit, for the whole -- actually, forever. Let's just say for as long as you've been PIA coordinator, have you ever asked Parks specifically, "Do you have an agreement with Holly Nicodemus to maintain a fence across the railroad?"

MR. ZACARIAS: Objection until there is a foundation that that is an actual PIA request and it is part of this case.

THE COURT: Overruled. You can answer.

THE WITNESS: I don't parse out requests from customers. I submit the entire request as it's given to me to our custodians.

BY MR. HOLDER:

Q Do you think we may have less PIA disputes if you took the reiterations and asked those questions to the unit heads so that we could narrow these requests at all?

MR. ZACARIAS: Objection.

THE COURT: Sustained. Next question.

BY MR. HOLDER:

Q I just want to bring up Plaintiff's Exhibit 7. I'll retrieve my laptop here, Mr. Burrows.

(The document referred to was marked for identification as Plaintiff's Exhibit 7.)

(Pause)

BY MR. HOLDER:

Q Do you know who Emily Vanery* is, Mr. Burrows?

MR. ZACARIAS: Your Honor, I am going to object. I will withdraw the objection and give him a little bit of leeway.

THE COURT: I have no idea who that person is, how that person connects, but I will allow him to ask it.

I am going to caution you, Mr. Holder, if you are not cognizant of your time, it may cut into your time to offer evidence when you are testifying. That is my only caution.

You can ask the question. Do you know that individual?

THE WITNESS: Yes.

BY MR. HOLDER:

Q Is that individual counsel from the Attorney General's Office for the Department of Natural Resources?

A Yes.

Q Do you know that the Department of Natural Resources was engaged in title litigation with Justin Holder at some point in time?

MR. ZACARIAS: Objection. Strike that. I think that he can answer if he knows.

THE COURT: Are you withdrawing the objection?

MR. ZACARIAS: I am withdrawing the objection.

THE COURT: Do you know the answer to that?

THE WITNESS: I do not know the answer to the question.

BY MR. HOLDER:

Q Has DNR provided certified business records to Justin Holder in any shape or form, outside of the Maryland Public Information Act?

MR. ZACARIAS: I am going to object to that. That has nothing to do with the PIA requests here.

THE COURT: Sustained.

MR. HOLDER: I am going to move to admit on their certified business records. The document speaks for itself, Your Honor. It's a certification --

THE COURT: What document?

MR. HOLDER: The document in your hand. Plaintiff's Exhibit 7.

THE COURT: Plaintiff's 7?

MR. HOLDER: It's a certified business record from the Attorney General's Office. It self-authenticates. I don't need a witness.

MR. ZACARIAS: That is with respect to authentication, Your Honor. We are going to object on relevancy grounds.

THE COURT: I don't know the relevance.

MR. HOLDER: If you read the document, it's a letter from Carl Disk. It's letters from Holly Nicodemus. It's records that would be, you know, ultimately responsive.

THE COURT: I see you have a certification here. What is the relevance to this case and your third amended complaint?

MR. HOLDER: Oh, that they do have the documents. They just chose not to give them to me. But the documents are there and they chose not to give them to me under the Maryland Public Information Act.

THE COURT: I will receive Plaintiff's Exhibit 7. I will overrule the objection.

(The document marked for identification as Plaintiff's Exhibit 7 was received in evidence.)

THE COURT: I am not necessarily drawing the conclusion you want me to draw but I will receive it.

MR. HOLDER: No, I understand. I'm going to probably finish up pretty quickly here.

I want to move back to Plaintiff's Exhibit 1. And that is the Chapter 4 of the Maryland Public Information Act manual. I'm going to admit --

THE COURT: That wasn't 1.

MR. HOLDER: Oh, I'm sorry. I never -- you know what? I never labeled it. I just kept it. I'll just keep it as demonstrative. It's a -- it doesn't need to come in. It's just --

THE COURT: Okay. Go ahead with your next question, whatever it might be.

BY MR. HOLDER:

Q The Maryland Public Information Act, on page 44 of that document. The last paragraph.

THE COURT: The last paragraph in Section 4-4 you are asking about?

MR. HOLDER: Yeah, on 44, the --

THE COURT: I just want to make sure I am in the same place you are.

MR. HOLDER: Yeah, I'm in the -- I'm actually on the last two paragraphs.

BY MR. HOLDER:

Q Did you make any attempt to avoid a constructive denial of the MPIAs subject to this complaint?

MR. ZACARIAS: Objection. That calls for a legal conclusion.

THE COURT: Sustained.

(Pause)

BY MR. HOLDER:

Q Did DNR -- in paragraph 64 of 68 of the complaint, it discusses a notice of default and an opposition filed to that notice of default. Are you aware of any legal grounds or authorities to oppose a notice of default?

MR. ZACARIAS: Your Honor, objection.

THE COURT: Sustained.

BY MR. HOLDER:

Q In the emails you provided me in response to the July 30th, 2022, MPIA request, you provided them with an affidavit sometime in late September of 2022? And I believe they're going to be Defendant's -- let's see, Exhibit -- it looks like Defendant's Exhibit H and I.

Who is Angela Shirley*?

A Angela Shirley is the Natural Resources Police custodian.

Q You made a request to her to find any agreements with the abutting landowners, complaints, cease and desist demands, and the agreements are listed as A, B, and C, I guess, at the bottom of the page of I there, Exhibit I. There's a -- it's sort of a recitation of a Public Information Act request I made.

A No, I did not make that request of her.

Q Did you ask -- okay. At the top of exhibit I, Defendant's Exhibit I, she says, "Good morning." Angela Shirley apparently says, "Good morning. NRP does not have any responsive documents for that question." Do you know what question Angela Shirley was referring to?

MR. ZACARIAS: Objection. Called upon him to read

Ms. Shirley's mind.

THE COURT: Sustained.

BY MR. HOLDER:

Q As an employee for DNR, what was Angela Shirley responding to?

MR. ZACARIAS: Your Honor, I am going to object to that. That is confusing. He needs to reword that question.

THE COURT: Are you able to answer that question, sir?

THE WITNESS: One second please.

THE COURT: Take a look before I rule on the objection.

THE WITNESS: What was request number for that?

BY MR. HOLDER:

Q This is going to be Plaintiff's Exhibit I.

A I.

Q So, I believe this is a responsive document to the 7302022 request, but these communications are talking about the 7072022 request.

A One second.

THE COURT: You said Plaintiff's I. I think you are referring to Defendant's I?

MR. HOLDER: Yes, you're correct. Defendant's I. Thank you, Your Honor.

THE COURT: Okay. I just want to be -- make sure everybody is on the same page.

MR. HOLDER: Well, I need somebody to keep me in line and you're as good as anybody.

(Pause)

THE WITNESS: I believe you're referring to the complaint cease and desist demand letters.

BY MR. HOLDER:

Q Yes.

A Yes, I did -- I did ask Angela Shirley to look up that information.

Q Would you have asked her at 8:27 a.m. on August 19th, 2022?

A I don't remember exactly when I asked her but I did ask her the question.

Q Does the email -- was the email that you sent to her asking the question sent on August 19th, 2022, 8:27, or would you have asked her in a different email?

A I would have asked her in that email I guess. I don't know.

Q Was that email sent at 8:27 a.m., August 19th, 2022?

A Do you have a copy of my email?

Q I do. That's Plaintiff's Exhibit I.

A Thank you.

Q Speaks for itself?

A Yes.

Q She would have answered it at 8:36 a.m.?

A Yes.

Q About nine minutes later?

A Yes.

Q Are you familiar with what type of search she would have done in nine minutes?

A Yes. She would have searched NRP citations and -- in her database that they have to look up stuff just like that. And it's very responsive.

Q Does anybody at DNR have the ability to search that database, or is it limited to just Ms. Shirley?

A It's a police database.

Q Any DNR officer could've searched it?

A I don't know how they work their systems.

Q Or maybe their dispatcher?

A I don't know.

THE COURT: Do you have further questions?

MR. HOLDER: Just a few, Your Honor. Like I said, I'm working here. Do you want to wind up at 4:00?

THE COURT: I just want you to finish your questions. And the reason I am saying that is you said you were about done not terribly long ago. I think he said something about that. But maybe I misunderstood.

MR. HOLDER: I just have -- I suppose some of the key documents that are responsive that came from DNR, I think

DNR has to authenticate them to put them in the record. I was going to try to do a little housekeeping as far as that goes.

If Your Honor wants me to and you'll accept my authentication as receiving them, I can do them under my testimony.

THE COURT: I think you have to run that by --

MR. ZACARIAS: I am fine with that approach if it means that Mr. Burrows can step down.

THE COURT: Okay.

MR. HOLDER: Okay. I'll do these on --

THE COURT: I just want to make sure. I don't want him to step down and then you just have further questions. Are you done with your questions for Mr. Burrows?

MR. HOLDER: Yeah, I'm done with my questions for Mr. Burrows.

THE COURT: Do you have any follow up questions?

MR. ZACARIAS: I have no follow up, Your Honor.

THE COURT: Thank you, sir. You may step down.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: That is the Defendant's case or was there something you said you wanted to add towards the end?

MR. ZACARIAS: Actually, yes, there is. One little minor matter, Your Honor. I just want to put something on the record that I think we can either stipulate to or take judicial notice.

And that is that there is in Washington County right pending another lawsuit against DNR from Mr. Holder against Mr. Burrows involving additional requests that are on Exhibit 1 -- Exhibit A and B. Defense Exhibit A and B.

And just for the record, those numbers are the Request Numbers 112822 and 103023. And I don't know if Mr. Holder wants to stipulate to that. I just wanted to make sure that is in the record in the event that it --

THE COURT: How is that relevant to the determination that I have to make?

MR. ZACARIAS: Your Honor, part of this is that --

THE COURT: They are being litigated separate.

MR. ZACARIAS: They are being litigated ---- if for some reason the issue comes up in Mr. Holder's case, I at least wanted to get that into evidence in our case in chief. And it is really an abundance of caution, Your Honor.

THE COURT: You agree that that is pending in Washington County?

MR. HOLDER: It's public record. I mean, I'm not going to dispute the public record. If he's moving to consolidate the cases, that's a whole other story.

THE COURT: I don't think he was asking that.

MR. ZACARIAS: I am not doing that.

THE COURT: I will accept that. I will take that as a stipulation. That both parties agree that is pending in Washington County.

MR. ZACARIAS: I could have done it in his case. I just thought I would wrap up mine with it. With that, Your Honor, the defense rests.

THE COURT: Do you want to testify, Mr. Holder?

MR. HOLDER: Yes, Your Honor.

THE COURT: Do you have any -- you don't have any other witnesses available that you are calling today, correct?

MR. HOLDER: They were all quashed, Your Honor.

THE COURT: I don't know about that. I didn't do it. I wasn't involved.

MR. HOLDER: I understand.

THE COURT: You come over to the witness stand. We are going to administer an oath.

MR. HOLDER: Okay. I have exhibits --

THE COURT: We will figure it out.

MR. HOLDER: Okay.

THE CLERK: If you will remain standing, sir, and raise your right hand.

Whereupon,

JUSTIN HOLDER

was called as the Plaintiff, having been first duly sworn, was examined and testified as follows:

THE WITNESS: I do.

THE CLERK: Thank you. You may be seated. And would you please state and spell your full name for the record.

THE WITNESS: Justin, J-u-s-t-i-n, Holder, H-o-l-d-e-r.

THE CLERK: Thank you.

DIRECT EXAMINATION

THE COURT: Okay, Mr. Holder. What would you like to talk about?

THE WITNESS: Beginning in June of 2020, I became interested in public information regarding an abandoned railroad near a property I manage and my wife owns a company I have owned -- it's my family's property generally.

We had some utilities issues. Some sewer that was polluting. Looking for some roads. And so doing that, I was cited by the DNR for a $50 fine for disturbing a rock, plant, or mineral. Disputed ownership over the railroad.

And that triggered some records requests, which I think would -- I thought would exculpate me and my crime. I spent over $10,000 in attorney's fees related to these crimes. I think that the key documents I got would be exculpatory type materials and --

THE COURT: Why didn't you have your attorney gather them?

THE WITNESS: Well, it's very expensive, Your Honor.

I paid $100,000 in Washington County.

THE COURT: It was a criminal case, right?

THE WITNESS: It was a criminal case --

THE COURT: Usually, it is just a flat fee for a criminal case. They are not charging you by the hour.

THE WITNESS: These were complicated cases.

THE COURT: Okay. Go ahead. Sorry.

THE WITNESS: And in a separate PIA trial, I spent over $100,000 to get documents and to find out that the Washington County government deleted wiretapped information, deleted Brady information off of their computers was the testimony in that case.

And it's a very expensive process, very cumbersome, burdensome on a citizen to obtain this information. Once the criminal cases were dismissed, you have no way of obtaining Brady information through the -- what you would normally -- normally, it's my understanding --

THE COURT: Why do you need it if the criminal cases are dismissed?

THE WITNESS: To file malicious prosecution charges against the State and to show the public --

THE COURT: Have you done that?

THE WITNESS: I filed Tort Claim Act notices.

THE COURT: Against the State of Maryland?

THE WITNESS: to the State of Maryland. But the

State can't do any wrong. I filed them against the park ranger and the DNR agent. Some other private citizens.

But generally, I thought, you know, it is in the public interest when there's dispute over title and the State chooses to use a criminal proceeding to gain an unfair advantage in third party civil litigation over property.

And I thought that, you know, citizens in Washington County that were debating this bike trail for over 30 years -- it's been a large matter of public controversy. They had a large public meeting in 2022.

At each and every turn, the State's acquiesced every time they've tried to put the bike trail in. They've acquiesced to the public, acquiesced to the challenged, acquiesced in the civil litigation we were in. Acquiesced in the criminal litigation.

I think it's in the public interest of why the State would chose to prosecute me to the extent they chose to until I acknowledged they had some title. And I wanted to shed light on that controversy with these documents.

THE COURT: Okay. So let's talk --

THE WITNESS: It took me a long time.

THE COURT: I understand. Let's talk about your third amended complaint.

THE WITNESS: Okay. Third amended complaint. Some of the key documents I got -- how do you want me to handle these?

THE COURT: You can just -- are you moving to introduce them?

THE WITNESS: I'm going to authenticate and then admit.

THE COURT: If there are a stack of them, what -- when we are talking about documents, these are documents that were provided to you by Department of Natural Resources as a result of your Public Information Act requests.

THE WITNESS: Yes, so specifically they were provided in the 11142022A request.

THE COURT: Why don't you just put them in a stack and I will mark them collectively. I want counsel to get a chance to look at them quickly.

MR. ZACARIAS: Thank you.

THE WITNESS: I have them right now individually.

THE COURT: No. Just put them in a stack and then we can talk about them one at a time. Oh, you have to separate them?

THE WITNESS: What? I do. Is that a --

THE COURT: Go ahead. I would rather do it that way. I think it might save some time in the long run.

THE WITNESS: Okay.

THE COURT: And at some point, you will have to explain to me how that is relevant to your third amended complaint, but not yet.

THE WITNESS: Okay.

THE COURT: All right. I am going to just stretch my legs and come back in probably less than five minutes. If anyone needs to step outside for any reason, you are welcome to. And it will give you a chance to reorganize the documents.

MR. ZACARIAS: Are we off the record?

THE COURT: Well, yes and no. We are off the record as far as the trial. It records non-stop though so if you want to speak privately, maybe out in the hallway is a good idea.

THE CLERK: All rise.

(Whereupon, at 3:28 p.m., a brief recess was taken and at 3:34 p.m., the proceeding was recalled.)

THE COURT: We are back on C-02-CV-22-1474.

THE COURT: Mr. Holder, I will remind you you are still under oath. State your name again for the record.

THE WITNESS: Justin Holder.

THE COURT: You may continue with your testimony.

DIRECT EXAMINATION (Resumes)

THE WITNESS: I have in my hand Plaintiff's Exhibit 8, which are documents that were provided to me in response to the --

(The document referred to was

marked for identification as
Plaintiff's Exhibit 8.)

THE COURT: Collectively 8.

THE WITNESS: Collectively 8. It's a large stack of documents.

THE COURT: Yes, I got it.

THE WITNESS: They were provided to me in response to the MPIA request subject of this complaint.

THE COURT: Okay.

THE WITNESS: And, you know, these documents are key.

If you look at the top, it's a petition to the Surface Transportation Board made by Talley Kovacs, who I know and understand to be counsel for the Department of Natural Resources, requesting authority to continue a rail and trail or a railroad.

The Surface Transportation Board's decision was that they no longer have authority over this railroad.

And if you would look at Plaintiff's Exhibit 6, that was some of the pertinent authorities that DNR would've been on notice of as early as March 10th, 1993, that there would be no authority for a rail trail over this particular property.

Moving forward to the key documents that would inform a public debate. And I would just -- I'm sorry. Let me just go back to those first two.

I would just note that the petition would've have been filed the 22nd day of April, 2022, which was actually six months prior to me making my request ---- and the Surface Transportation Board's answer would have been finalized -- let's see.

That looks like that's dated -- I’m trying to find the date on that. All right. January 11th, 2023 is when that is dated. So, about 10 months prior to them providing an answer to that MPIA for railbanking agreements.

Next, I come to a letter from -- or to Mrs. Leslie Cruise* and the second sentence of the first paragraph, "As you are undoubtably aware, the ownership issue along the old railroad right of way that was purchased from CSX by Maryland Department of Natural Resources has always been a contentious issue."

Again, a document that would inform a public debate over this railroad.

The next document is an email from -- the top portion of it is going to be an April 30th, 2020 email from Mr. Chip Wood to Dan Hudson. And below that is an email from Dan Hudson to Mr. Chip Wood, April 30th, 2020.

Third sentence in that first paragraph, "Their findings were not as optimistic as yours with only a small amount, a handful of individual parcels held fee simple and most with no documentation at all."

This was a question about the abandoned railroad. Again by the context document speaks for itself.

The next key document, a Civil War rail trail update for John Griffith --

THE COURT: Griffin.

THE WITNESS: Griffin. I'm sorry. Griffin.

THE COURT: No problem.

THE WITNESS: -- to other DNR employees discussing various problems with the Civil War rail trail leading to the Roxbury trail story.

The next document is actually a list of every PIA that Mr. Burrows, he provided me in response to what I called the crystallized policy MPIA.

I don't know the date on it, or the DNR numbering, but it has -- what I thought was important is that I asked for the 10 day letters, the date that they were sent and the date the documents were provided. That isn't on there.

It doesn't look like there's any 10 -- either there's no 10 day letters sent or he didn't provide that information to me. And I would just say that it looks like it's a spreadsheet.

So the center three columns that he says are sociological data, I would've thought they would be easily deleted. I wouldn't have known why you would've had to redact those.

The next document is a land purchase contract dealing with the --

THE COURT: -- August 22, '91.

THE WITNESS: -- August 22, '91 purchase agreement. As we noted -- well, I'm familiar with land contract purchases merge into a deed to protect the contracting purchase. So this would be part of the deed.

Very important document here as far as the railroad deed and the representations made by the railroad at the time.

Next email is a email from Cars*, Steve* to Saunders, Kristin* M, August 29th, 2012. I would look at item number 6, second -- third sentence, "Even if we own the land and even if everyone's supported the trail, the likelihood of it being built in the next 20 years is questionable."

Again, key document there with some acknowledgement that there is at least a title -- *bona fide* title dispute as it related to criminal charges --- that would be, I would think, exculpatory to an extent there that a *bona fide* dispute.

Next is a Office of Planning letter dated October 2nd, 1989. Certain recommendations of how to deal with State and zoning regulations and regarding land.

And, you know, it would be my contention as a citizen, I would be upset if the State was asserting any regulatory authority over land that they don't own or it's questionable under the Takings Clause of the Constitution.

I read a case, Gail versus Litz or Litz versus Department of Environment, Gail Litz. It sort of describes a course of action for inverse condemnation and I see that is similar, you know, in my studies.

Maryland Department of Natural Resources, October 11th, 1989, again discussing the importance of a railbanking agreement.

I have a October 26th, 2012 letter to Christopher B. Shank* from Senator Griffin, discussing at paragraph 2, the entire ownership question and DNR's goal to I guess resolve it at some point.

Then I have a December 22nd, 1993, letter to Tori* ---- that's written for D. Bruce Poole. It would go to the credibility of how far back they keep records from D. Bruce Poole.

And if you notice, I think it is D. Bruce Poole's contentions -- I suppose as a delegate and representation of his constituents and/or his -- he's -- as an attorney, that DNR wouldn't have followed the law in acquiring the railbed. His concerns.

And, you know, after reading the letter and speaking with Mr. Poole, it's my understand that it was the railbanking agreement that, since there was no railbanking, no conditions of public use, performed with the ICC that either the reverter caused to the extent you were debasing the fee simple property or to generally Maryland law, a railroad being an easement, just a general action phase abandonment.

That's a letter that raises those concerns as early as 1993, December 22. And last email is going to be Joe Prothworth* to Steve Carr*, and it's an email about a rail trail issue as I brought up just April 14, 2012.

So you know, for at least 20 years, between when Mr. Poole wrote the letter in 1993 to April of 2012, 19 years, this has been a hot topic, very big controversy, lots of public interest.

It's not just my pecuniary interest in the Brady evidence and going after a lawsuit. It's also got a lot of public interest if the State's willing to go to these lengths of prosecution to protect a title that they're not sure.

I have --

THE COURT: Are you moving to introduce 8 collectively?

THE WITNESS: I would like to introduce 8 as key documents that I received from DNR in response to these MPIA requests.

THE COURT: All provided to you by DNR.

THE WITNESS: All these documents were provided to me by DNR.

THE COURT: Any objection?

MR. ZACARIAS: Your Honor, I am not going to object to them. I am just going to just note that I am going to reserve arguments under Glass as to weight and probative value of them for the issues today.

THE COURT: Okay. I will receive 8.

(The document marked for identification as Plaintiff's Exhibit 8 was received in evidence.)

THE WITNESS: Okay. Thank you.

THE COURT: Do you have your copy of the exhibit?

THE CLERK: I do.

THE COURT: Or do you need my copy?

THE CLERK: I do.

THE COURT: Excellent. All right. That is received.

THE WITNESS: Would you be able to pass this to the Clerk? I have 9. I don't mean to make you get up.

(The document referred to was marked for identification as Plaintiff's Exhibit 9.)

MR. ZACARIAS: Oh no. You are fine.

THE WITNESS: Would you mind giving that to Your Honor as well? Thank you.

MR. ZACARIAS: Did you already give it to her?

THE WITNESS: I did.

MR. ZACARIAS: Okay. So Your Honor needs a copy ---

THE WITNESS: I have in my hand what's been marked as Plaintiff's Exhibit 9.

THE COURT: Yes, sir.

THE WITNESS: It says Exhibit 2 at the bottom because it's actually also an exhibit in a lawsuit that DNR referred to earlier. This is a letter that I wrote to the Brunswick line option for B&O line proposal. In regards to railbanking.

There's a public controversy. The Republicans in Washington County were concerned about property rights. MDOT was looking at putting in multiple MARC extension lines and one of the options was the old railroad line.

I brought to the attention of MDOT that I had reviewed files at the Department of General Services and there weren't any railbanking agreements. This is dated March 9th, 2023.

Didn't have any of the information from the Department of Natural Resources, but just with the information I got from the Department of General Services. Their response is on the last page of that and they actually abandoned -- the document says what it says.

But generally, after receiving the email back, it was my understanding that MDOT abandoned all plans of using this as a railroad because they couldn't establish the ownership of it after, you know -- and some of that is iterations came from Public Information Act requests in trickles of documents I had received from DNR prior to that.

So, I would say, as far as testimony about the PIA, I did accomplish and I got a tremendous amount of key documents on 1114. What I didn't get are the letters from Bruce Poole who I was going to bring as a witness today but that subpoena was quashed. But the emails that I --

THE COURT: Is he still alive?

THE WITNESS: He is still alive.

THE COURT: Okay.

THE WITNESS: He's doing well.

THE COURT: I just saw that was such an old letter from 30 plus years ago.

THE WITNESS: It is. I talked to Mr. Poole in email and it was my understanding after his response that he did send a letter I'm looking for to the D --

MR. ZACARIAS: Objection. It is hearsay.

THE WITNESS: It was my understanding, Your Honor.

THE COURT: Overruled. Go ahead.

THE WITNESS: It was my understanding that he did send a letter to the Department. I attached true and accurate copy --

THE COURT: What letter? The letter you have already given me as part of 8?

THE WITNESS: No, I haven't given you this letter. It was a letter dated -- it's in my complaint. I don't remember it, but it was a 2008 or 2006 letter to Jeannie Lippert*.

THE COURT: Okay.

THE WITNESS: I'd asked earlier when I was inquiring of Mr. Burrows, I asked --

THE COURT: Was it provided to you?

THE WITNESS: It was not provided to me.

THE COURT: Do you ever think maybe they don't have it?

(Pause)

THE COURT: I mean, what is DNR's -- what are they getting out of this fight by messing with you? I mean, if that is what you think they are doing. What benefit is that to them?

THE WITNESS: Well, if you read Exhibit --

THE COURT: I am asking you as a, not a legal term but like not cooperating with you.

THE WITNESS: Sure. Right. Why are they frustrating my requests?

THE COURT: Yes.

THE WITNESS: It's embarrassing, Your Honor. It's embarrassing to the Department that they bought a pig in a poke, that they're a fraud, that they've been a fraud. The

State of Maryland's a fraud. Everybody knows it.

And yet they won't just admit that they didn't get good title to this railroad. And instead, instead, what they've implemented is a plan to withhold water from my family until we sign a deed acknowledging DNR owns the property.

Jack me up for $50 for disturbing rock, plants, or minerals until I acknowledge DNR's title. And I have been forced to back them down in court over and over, to back this big agency, this State, little Justin.

I ---- on and have them acquiesce over and over when their title's been challenged.

And the reason they're doing it -- it's explained in Exhibit Number 9. The State Department of Assessments --

MR. ZACARIAS: Your Honor, I am going to object at this point. He did talk about Exhibit Number 9 and then he did not say that this is something that DNR produced.

And on its face, there's no indication that this is a DNR document that was produced or relates in any way to the requests that are subject of the third amended complaint. So I am going to object to this exhibit.

THE COURT: Where did 9 come from?

THE WITNESS: 9's an email between me and the Maryland Department of Transportation.

THE COURT: It is an email that you sent?

THE WITNESS: It's an email I sent and then the last page is an email that is --

THE COURT: Do you need their response?

THE WITNESS: It's their response. It's the MDOT response to it, yes.

THE COURT: What you sent, I don't have a problem with. Their response might pose a problem. I am going to allow it. I mean, he wasn't allowed to call witnesses or conduct discovery so I am going to receive it. 9 is in.

(The document marked for identification as Plaintiff's Exhibit 9 was received in evidence.)

THE WITNESS: I appreciate it. So, the problem when I talked to MDOT, it was my understanding that MDOT was relying on SDAT data in order to establish ownership.

And I took the time to explain to MDOT that when you have a sovereign authority -- an individual, there's no estoppel. There's no notoriety. It's what is in the title. The State can't take our property and we can't go adversely possess the State's property.

So there is no notoriety issues that you get from a tax map. And I said that they are not conclusive in establishing title. I don't know what MDOT did with that, but I know what MDOT responded back to me, and they abandoned the railroad because --

THE COURT: Okay. Let me, let me, let me interrupt for one minute. I took you off track.

THE WITNESS: A little bit, yeah.

THE COURT: I apologize for that. Back to your complaint.

THE WITNESS: Okay. I need to admit Number 9.

THE COURT: I received 9.

THE WITNESS: Okay, you did? Okay, very well. So, I'm asking for these documents and I began asking -- just like the, I'm going to say it's Number 1. I did sent that email. I did make that request. I'd like to admit that as a email I sent to the Department of Natural Resources.

THE COURT: What number?

THE WITNESS: Plaintiff's Exhibit 1.

THE COURT: 1?

THE WITNESS: Yeah. It didn't get admitted --

THE COURT: Yes, it didn't get admitted early. I need to pull it back up. I had it here a moment ago. That is an email that you sent to DNR?

THE WITNESS: That I sent on September 24th, 2020.

THE COURT: Okay. I will receive it.

(The document marked for identification as Plaintiff's Exhibit 1 was received in evidence.)

THE WITNESS: And when I sent that, I asked them -- you know, I just simply asked them --

THE COURT: 1 was received. 9 was received. Do you have 1?

THE CLERK: I just want to make sure we are looking at the right --

THE COURT: 1 is -- it starts off with Public Information Act request 112122.

THE CLERK: Yes.

THE COURT: December 1, 2022.

THE CLERK: Yes. Perfect.

THE WITNESS: Do we have the Number 2 also, September 24th email.

THE COURT: That was already -- 2 I thought I received, but let me double check.

THE CLERK: No. You didn't.

THE COURT: No, I didn't either. You are correct. This is your email to DNR again?

THE WITNESS: That's my -- yeah. So I apologize. I was asking --

THE COURT: I will receive it.

(The document referred to was
marked for identification as
Plaintiff's Exhibit 2 and was
received in evidence.)

THE WITNESS: So between Exhibit 1, my Exhibit 1 and my Exhibit 2, in both of those, I'm asking for railbanking agreements. I'm asking, "Hey, there's a 1983 statute. Does DNR have any communications? Did you try to railbank this line?"

And, you know, ultimately, Talley Kovacs comes back and she sends a petition to the STB. Service Transportation Board took over for the Interstate Commerce Commission sometime in the early '90s. They control railroad authority now.

She asked the STB. They say, "No, look. It's abandoned." And I'll represent that some of the documents and exhibits that are attached to that petition I gathered myself a from National Archives search in June of I think 2021, that she had.

And I'm asking for these documents in a very, I'm going to say narrow -- I'm trying to target. I don't know what documents they have. I don't know how they keep their documents.

And I've never received any communications back from DNR of, "Hey, what are you asking for? What do you need? What do you want?"

It was just stonewall after stonewall, to where I had to send an email, "Hey, you're willfully and knowingly denying me these records. I'm going to have to file suit."

Then we tried to mediate. That went for 18 months. Come out in May, still don't have what I feel was the documents responsive.

I asked them, "Hey, what are you doing to get the documents?" which was the original complaint was the what he calls the -- when I say he, Mr. Burrows and DNR -- calls the s 7302022 request, where I said, "Who'd you ask?"

And when you look -- I believe that's Defendant's Exhibit H and I, where the emails responsive to that, you see in there they say, "Hey we asked -- somebody asked Talley Kovacs and then we put a hold on it."

Well, I know that if I'm eligible for it in civil litigation, I'm eligible for it PIA. You can't withhold a document, it's my understanding, just because it's going to harm you in civil litigation.

And I thought that's what they were doing. And sure enough, when I got the documents, that's what they were doing.

So then, I get a discovery order in this case that I'm not allowed to do discovery. So I make a couple additional PIA requests as to "Hey, what about the Angela mock* communications? What about the Talley Kovacs communications?"

Which really, that was -- there's a separate area of the law in the PIA, Your Honor. It's under 202(d), 4-202(d). And I call it the canary in a coalmine. It's that they have

30 days to tell you they don't have any responsive records.

So sometimes you have to ask a PIA that way so that you get back, "Hey, we don't have anything." Well that says they didn't do anything.

So I asked, "Hey, did anybody else tell you to withhold these?" And Mr. Burrows's response tells me that it was his decision to, you know, withhold these emails from me and to not ask Parks. It was his, you know, knowledge. It was his intent.

And that's what I was trying to seek there is the motive and intent behind that. With some of these PIAs -- you know, it's a tough situation. You don't want to ask a bunch of PIAs. You don't want to come to Court and be called a vexus PIA liti --

THE COURT: Vexatious.

THE WITNESS: -- vexatious PIA requestor. But at the same time, these PIAs encompass -- you can look at their Defendant's Exhibit, I guess it's B and A. They encompass the same subject matter. I'm asking about the same thing. I'm making reiterations.

It's my understanding you're supposed to work together in good faith to get these requests. I'll submit to this Court that I think it would have been -- you know, my opinion if it matters is we could've got this done a lot quicker.

Could've worked together. Could've narrowed the scope. Could've said, "Here, here's a box, Mr. Holder. Have at it. Most of these things are 30 years old. What do you want?" But we didn't do that.

It was every step of the way, every dispositive motion filed, I think four in this case. And finally at pretrial, the eve of the pretrial conference, I get 6,000 pages of documents that I've been asking for for four years.

Don't get the 2006 D. Bruce Poole letter to Jeannie Lippert that we know got sent. And don't get the agreement between Holly Nicodemus and the State for the fence that I'm asking for. And I didn't think they looked for it.

That's my testimony. I'm conclude my --

THE COURT: Okay. Do you have any questions?

MR. ZACARIAS: I think I can really make this a short cross-examination and wrap this up.

THE COURT: Okay.

MR. ZACARIAS: But I do need a little bit of time. Does Your Honor have any sort of a hard stop that we need to be aware of?

THE COURT: 4:30.

MR. ZACARIAS: 4:30? Okay. Thank you.

THE COURT: And let me say this. And I am not rushing you. If you don't feel like you can finish by 4:30 -- you lost an hour and 15 minutes. Those were my other cases --

I will just pick another day and come back now.

If you think you will be done, then we do need to do any closing arguments by 4:30, we will keep rolling. If not, let's just pick a -- come back one day next week.

MR. ZACARIAS: I hope to keep this to about five or 10 minutes of cross. And then we can jump right into closing.

THE COURT: Okay, go ahead. Okay. Go right ahead then.

THE COURT: And again, I am not rushing you. I am not rushing Mr. Holder.

MR. ZACARIAS: But I have to just sort of get myself situated here.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. ZACARIAS:

Q I am going to have to use the screen here, Mr. Holder, just because I think that I have exhausted my paper copies of things. So please bear with me.

In your testimony on direct, you had used I believe it was Plaintiff's Exhibit 2, which was a September 24th PIA -- which was an email to the PIA email address from you, entitled "September 24th PIA No Response." I am sorry, that was a November 3rd, 2020 email. Is that correct?

A Yeah, it was November 3rd, I think.

Q And do you have Exhibit 2 in front of you?

A I don't but I trust you.

Q I don't need you to trust me. I just want to make sure you are familiar with it before I ask you any questions.

A Yeah, that's the one I admitted as Plaintiff's 2.

Q Why don't you hold onto that just for a second?

A Okay.

Q Just so you can -- because I am going to need you to make reference to another exhibit. I am going to direct your attention to Exhibit B, Defendant's Exhibit B.

THE COURT: Do you want to use my notebook? You are welcome to use my notebook.

MR. ZACARIAS: I would love to, just if I have a paper copy.

THE COURT: I haven't made any notes in it, other than I relabeled the --

MR. ZACARIAS: I am sorry. It was Plaintiff's Exhibit 2. I only got one copy and I just gave it to him.

THE COURT: Plaintiff's 2.

MR. ZACARIAS: Plaintiff's 2, not Defense 1.

THE COURT: You are right. I am sorry. Here.

THE WITNESS: I'm familiar with it.

BY MR. ZACARIAS:

Q What I want to do is I want to direct your attention to Defense Exhibit B, and specifically the entry that says "091720." Do you see where I am talking about?

A Okay, yes.

Q Do you want to read that section there?

A "All documents, records, communications from B&O portion of Washington County Railroad in Washington County, Maryland as it relates to compliance with ICC Docket AB19 sub 20 and railroad abandonment under (A)? 1247(D) or compliance with Transportation Article 7-901.

"Please include all correspondence with ICC, showing State's intent for alternative use of condemned pack and continued eminent domain. This is the area of railroad the State claims to own and references as Weverton/Roxbury rail and trail.

"Provide documents related to Federal 1983 rail and trail statute usage. Please reply back for valuation maps, deeds, and references if this description is not specific."

Q Is that the same as is in Plaintiff's Exhibit 2?

A Yes.

Q So you would agree then that on Exhibit B, Defense Exhibit B, request that has been numbered 091720 is the request that is in Plaintiff's Exhibit 2, correct?

A Fairly the same request, yes.

Q Now I want to direct your attention to what was labeled as I believe, Defense Exhibit D. I am going to pull it up on the screen here.

A Is that the one where you responded back and answered like five requests on December 18th?

Q Correct. So you are familiar with that exhibit, right?

A Yeah. Yes, sir.

Q And do you see in the subject line that it has the request number 091720, correct?

A Yes.

Q And I am going to scroll down where in midway through, there is a December 18th email from the PIA address. This is Mr. Deems at the time, correct?

A Mr. Deems sent that email claiming to have produced documents responsive, correct.

Q So, just to say, Mr. Deems is writing you an email, responding. and claiming to produce documents relating to 091720, correct?

A That's what he claims in the email.

Q And you have agreed that that 091720 number is what is in Plaintiff's Exhibit 2, correct?

A Yeah. It's the same request. That's probably why Mr. Burrows couldn't find it in the list, because we were talking September 24th earlier.

Q I want to redirect you back to Defense Exhibit B. And I want to direct your attention to the first highlighted entry, which is 070120. And you would agree that that is the first MPIA request that is listed in your third amended complaint, correct?

A That is correct.

Q Chronologically speaking.

A From date, yes, sir.

Q Got it. Okay. Take a moment. I don't know if you have the paper copy of that exhibit still because you might need it. But I will see whether or not we can get by here.

A It's sitting on my bench if you want to grab it.

MR. ZACARIAS: Do you mind if I give him his paper copy?

THE WITNESS: Right there on your binder probably, in front of my computer.

THE COURT: What are you looking for?

MR. ZACARIAS: It is going to be Defense Exhibit A and B.

THE COURT: Take mine over.

BY MR. ZACARIAS:

Q Actually, I gave you a binder, right?

A Yeah, I can use that one.

Q So you have this.

A It's just the -- it's the old copy, before you updated the --

Q -- the ---- thing. Looking at Defense Exhibit A, do you see 070120?

A Second page, let's see.

Q It is at the very top.

A Very top of the second page? Got it. Oh, that's 070722. Oh, I see it. First one. First page, third one down. Yes, sir.

Q First highlight. And you see the date of DNR response. 12/18/2020, correct?

A I see that's what DNR claims, yeah.

Q That is what DNR -- that was another exhibit. You recall that exhibit, don't you?

A I think that was in my Plaintiff's exhibit, the correspondence. Maybe Plaintiff's Exhibit 4 or 5.

Q Let me refresh your memory. I am showing you what is Defendant's Exhibit C. This is the December 18th email that was previously admitted into evidence. It is an email to you from the PIA account, from Mr. Deems. And this is responding to 070120.

A I mean, I'm objecting to the foundation because I disagree whether it's responsive. I'll admit that DNR sent that to me and said it's responsive.

Q Fair enough. Fair enough. I think the point I am just trying to get is that DNR is responding to you on December 18th to your 070120 request. Is that correct?

A Yes, five months later or something like that.

Q five months later, fair enough. Now I want you to look at Defense Exhibit A. And isn't it true that in the 30 days that followed the 070120 request, you submitted three additional requests, correct?

A Well, yeah because August 1st would be 31 days. So yeah, three additional requests.

Q Then in August, the following month, you submitted three more additional requests. Isn't that correct?

A That's correct.

Q And in September -- and that is the month after that -- you submitted five additional requests, correct? Actually, I am going to say six. I am sorry. Six.

A It looks like seven.

Q Okay. Fair enough. Seven. And then in October, you submitted more additional requests, correct?

A I mean, if you want to stipulate that we had a lot of conversations, I can. But these aren't in the record. I'm trying to expedite it here.

THE COURT: That is not the question, though.

BY MR. ZACARIAS:

Q Can you just answer the question?

A I object to the relevance.

THE COURT: No, overruled. Answer the question.

THE WITNESS: October one. Two, three, four, five, six, seven. Six requests in October.

BY MR. ZACARIAS:

Q How many requests in November?

A Two in November of 2020.

Q So let's add all -- how many requests in December, before December 18th?

A One.

Q Is it fair to say that in the timeframe that you submitted, it's 070120 until DNR was able to respond, you submitted 20 more additional requests.

A I think they were the same request, about the same information. The same subject matter. I was trying to clarify what I'm after. I wanted DNR to understand exactly what I'm looking for.

I don't want them to waste time. I don't want them to waste resources. I want my documents with the least cost and least delay possible.

Q I will ask you this, but we could take judicial notice of it. You filed your original complaint in this case on September 6th, 2022. Is that correct?

A That sounds correct,

Q The original complaint claimed that DNR was unlawfully withholding records for requests 070120, 052422, and 0773022. Is that correct?

A Generally, but I'll make a note that there was some confusion over the labelling of the 0722. I had it as 070122, and I just sort of put a footnote in the complaint, acknowledging, "Look, we're gonna call it 0707."

Q Okay, fair enough. But Mr. Deems responded on behalf of DNR on December 18, 2070120, correct?

A What DNR alleges is a response, correct. A draft -- a draft response.

Q But you heard Mr. Burrows testimony also that with respect to 052422, he responded to that request that very day, correct?

A Well, I disagree. That's why we're here.

Q You disagree that Exhibit -- let's see, I believe that was Exhibit -- I guess maybe it was Exhibit E.

A Do you have a copy of that?

Q I do. I have it up on the screen.

A Okay, perfect.

Q This is Defense Exhibit E.

A I got you.

Q I am going to scroll down to the beginning of the thread here, where it is an email from Mr. Burrows to you. It is actually dated May 23rd.

And at the end -- I am going to read it to you. "For your information, the search I did was for Austin and Fluck*. That returned records from 28 DNR employees, with a total of 78 emails. None contained references to Austin Fluck or Fluck. All contained references to the staff and other individuals with the first name Austin."

A Well, I was looking for the -- if you go further up, I explained to him I wasn't just looking for emails. I think -- I think I spell it out here, May 23rd, 2022.

Typically, he would give a letter to Block Development and he has his attorney -- and I admit, I had Bruce D. Poole but I should've written D. Bruce Poole there -- write a letter stating his interest and viewpoints and I quote "a visual buffer around his farm."

And he uses a letter he received from the Maryland Film Institute and/or his conservation easement as justification and he would typically communicate through Mr. Poole. And he always communicates by letter.

I asked him a question. "Did you look for a letter from Mr. Fluck or his agents?" because Mr. Burrows had said there was an email. So that's what I was asking for is a letter.

Q Mr. Burrows did respond to the request to search for records with the words "Austin" and "Fluck" in it, did he not?

A That's because he did that based on what he thought came out of, you know, mediation. I don't think I asked him to do that, you know. I don't think that was the question. That's the problem. Sure, he sent me an email that said he did that.

Q Do you have any reason to dispute that he got that instruction from a mediator?

A Well, no, I don't have any reason to dispute he might have take that inference, but it was just incorrect.

Q Was that email from the mediator forwarded to you as part of this thread?

A There's an email from a mediator which he claims -- like I said, this is -- we're really getting into mediation that you objected to, but, you know, the judge will make a determination if it is or isn't.

Q I will move on. With respect to 073022, isn't it true that Mr. Burrows replied to that request on September 27th of 2022?

A He sent me documents on -- 073022?

Q Yes.

A He sent those after, or right before you guys filed summary judgement. So sometime around there. I wouldn't argue with you. It's close enough.

Q That was 18 days after you filed your complaint, correct?

A Eighteen, yeah. After I filed my complaint, he sent me the records.

Q Likewise, your first amended complaint was filed on December 3rd, 2022. Do you have any reason to dispute that?

A That sounds correct.

Q That you added to your first amended complaint 101722 and 103122A. Is that correct? Or do you have any reason to dispute that?

A So that's the Bruce Poole and the public meeting requests? Yes, I added those to my complaint.

Q Isn't it true that Mr. Burrows responded to the 101722 request on November 21st, 2022?

A The Bruce Poole email request? Yes, after I filed suit, he responded to that.

Q Very soon after, right?

A After I filed suit, ----.

Q Isn't it true that Mr. Burrows also responded to the 103122 request on February 1st, 2023?

A He did. The documents in the request had a metadate of 12/21/22.

Q So the question I have for you is, isn't it true that you are filing suit while Mr. Burrows and DNR are in the process of responding to your requests?

A I'm filing suit after I'm constructively denied my request to inspect public records under the statute 4-203(b) or 4-202(d), whichever one you want to look at. They got 30 days.

The only case law I know of in Maryland is Leopold* and it says if they give you a partial response, they can wait to give you more. There's some Federal case law for first in, first out. I don't know of any Maryland case law that justify this unlawful behavior from DNR.

Q Then your lawsuit is here -- you are here to claim that you were constructively denied records, notwithstanding that they were subsequently produced to you.

A Well, it's a knowing and willful violation of the statute. It's not necessarily a knowing and willful violation not to give me the documents. But I believe the statute when you read it says a knowing and willful violation of the MPIA statute.

And if you know you gotta give somebody something in 30 days and you're not sick. You didn't fall down the steps. Your computer didn't go down. You don't have -- and I don't even know that you can substantially comply in the PIA.

I don't know if there's case law to support that. It's just an intentional, "Hey, we're going to make you take us to Court. You want'em, fight for 'em. Drag 'em out of us." And that's what it felt like every time.

It's frustrating. It's in the public interest not to waste thousands of hours of -- Mr. Burrows's a very nice guy. I hate -- it's terrible that he wasted thousands of hours when he could've sent me an email and said, "What do you want, Mr. Holder?" And I would've told him.

He could've called me. I would've walked him through it. We would've got the documents. It would've happened just like that.

Why did the State not want to give 'em to me? Because they were filing criminal charges. They were greedy.

Q Meanwhile, you are filing suit -- as you are filing suit, shortly after 30 days or however long you want to characterize it. But in meantime, you will agree that you have been filing multiple PIA requests in the interim, correct?

A Yeah, there's no statute of limitations. You can always review an MPIA request. They are reiterations. They are legitimate document requests. I'm always willing to narrow the scope.

I've paid Mr. Burrows a check for $400 to get documents. I've paid for documents from many agencies. I've paid the money when I need to pay the money. I'll limit the scope when I need to limit the scope.

What I want is my documents with the least cost and least delay possible. I hate to see taxpayer resources, my resources, wasted on my documents that I can inspect at any time I want. This statute codifies my rights.

Q To my point here, which is that, during this time where DNR has 30 days to respond to your request, you were submitting multiple additional PIA requests. And then you are suing them for failing to respond to your original request within 30 days. Is that correct?

A When they violate the law, I sue them. That's correct. I have a reasonable basis in law to do that. When somebody violates the law, that gives you a cause of action.

Last time I checked in the State of Maryland.

(Pause)

BY MR. ZACARIAS:

Q Isn't it true that you have also filed MPIA requests to a number of different State agencies?

A I filed MPIA requests to the Maryland Department of Environment, Maryland Department of Planning, Maryland Department of Tax, the Attorney General's Office, the Environmental Crimes Unit --

Q Isn't it true that you have also filed MPIA requests to Washington County and the Town of Keedysville?

A Yes. In each and every one of those requests, I had to sue the government in order to get a release of documents. This is how our government operates.

Q Isn't it true that, with respect to Washington County, you have submitted well over 100 MPIA requests?

A Probably 160 they have the count at. I would tell you it's about 10.

It's about 10 reiterations of the same request, dragging the documents out, taking them to court, finding out they've been deleting documents, hiding documents in sock doors. Who knows where they're putting the stuff. It just disappears.

MR. ZACARIAS: That is all I have, Your Honor.

THE COURT: All right. Do you have any additional testimony or evidence you wanted to present, sir?

THE WITNESS: Can I just have a minute to --

THE COURT: Yes.

THE WITNESS: Oh, I do.

REDIRECT EXAMINATION

THE COURT: Go ahead.

THE WITNESS: In regards to the timing that he raised in his cross, I did look at metadata on the documents.

And my inspection with my PDF and my preview on Safari said that most of the documents that were responsive to the -- I believe it was the 1031 or 103022, the public hearing MPIA and the railbanking MPIA were created on December 21st, 2022. So it would be my belief that they were scanned in --

MR. ZACARIAS: Objection, Your Honor. This is hearsay based on what the computer saw as far as telling him.

THE WITNESS: That's my knowledge of how the software works.

THE COURT: Yes, I am going to sustain the objection.

THE WITNESS: Okay.

THE COURT: All right.

THE WITNESS: So I would need an expert to testify about that then?

THE COURT: I have just sustained the objection.

THE WITNESS: I understand, Your Honor.

THE COURT: Do you have any other testimony?

THE WITNESS: No, Your Honor. No, Your Honor.

THE COURT: That is the Plaintiff's case then, correct?

THE WITNESS: That's the Plaintiff's case.

THE COURT: Anything in rebuttal?

MR. ZACARIAS: No, Your Honor.

THE COURT: You can step down, sir.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

THE COURT: I will give you each no more than five minutes for closing. If you want more than that, we will come back another day.

MR. ZACARIAS: That is fine. Your Honor, in the interest of time, I am going to make my closing sort of a hybrid if you would allow me.

THE COURT: What does that mean, a hybrid?

MR. ZACARIAS: A hybrid motion for judgement. Part motion for judgement, part closing.

THE COURT: Just go into closing.

DEFENDANTS CLOSING ARGUMENT

MR. ZACARIAS: Okay, got it. Thank you. Your Honor, I concluded my opening stating that there would be three unavoidable findings that require judgement in the Defendant's favor and I will just take these very briefly in turn.

There is really no dispute here at all, no genuine dispute in the evidence that DNR has responded to all of Mr. Holder's requests. Mr. Burrows went through each and every response to Mr. Holder's requests that are at issue in this case.

Mr. Burrows testified that DNR has produced thousands of records and spent hundreds of manhours. Defendant's Exhibits, I believe it -- you will have to forgive me -- I think it is C through P and they reflect all of these written responses.

So the Court has that written documentation evidence in the record. I am going to spare going through each one of them. In many instances, Your Honor, the second amended complaint didn't even bother to mention these responses.

And Mr. Burrows has testified that DNR has produced every document in its custody that is not subject to certain exemptions of the MPIA.

The second amended complaint does not take any issue with the assertion of exemptions and so, Your Honor, the first unavoidable finding here is that DNR has responded to all of the requested documents.

I am going to put in a little quick plug here to say, Your Honor, that the MPIA law with regards to mootness is that when an agency responds to a request that may be the subject of litigation, that has the effect of mooting the litigation, except for possibly in two circumstances.

The first one is if the requester has suffered some actual damages and harm. In Mr. Holder's case, we heard no evidence of any harm to him caused by the delay.

The second circumstance where there may be a non-moot issue is where it is clear from the evidence that the judicial action, or the judicial intervention, is what compelled the production of documents.

You heard testimony from Mr. Burrows, completely unrefuted, that he was in process of going through all of these requests and trying to respond to all of them and produce.

So, Your Honor, without any evidence with regards to harm or that the judicial intervention compelled the production, this case is moot because Mr. Burrows and DNR responded.

The second finding that is unavoidable, Your Honor, is that DNR clearly conducted a good faith search and had reasonable efforts to locate records. It completely satisfied Glass standard which I articulated in my opening.

That is, that they conducted a search in good faith that was reasonably designed to capture all the responsive records using methods that are reasonably expected to produce the information requested. There is no requirement and Glass explicitly rejects this.

There is no requirement that every potential responsive document has to be unearthed. And it is worth repeating that standard, that the reasonableness is not to be measured by that -- that the agency's success in locating every record.

A search is reasonable even though it might not be perfect. Here, Mr. Burrows testified at length to DNR's processes for responding to MPIA requests. He explained their methods for searching.

He testified to his efforts to coordinate searches, working with the unit custodians and his own personal work in submitting email tickets to DoIT. And he explained the search capabilities and the limitations as it relates to document retention.

With respect to Mr. Holder's requests in particular, he testified to the efforts of the Land Acquisition and Planning unit in collecting the records, scanning them in for Mr. Holder. He testified to the email tickets he submitted to DoIT.

He testified to the hundreds of hours that he and staff at DNR have spent responding to Mr. Holder's requests. He testified to the thousands of pages that have been produced.

He also testified -- importantly, Your Honor -- to the plausible reasons why a document might not exist in DNR's custody, which is the root of what Mr. Holder seems to be arguing.

And, Your Honor, just to recap. For emails, they are only kept back until 2015 and for documents, they are at the units. It depends the unit's records retention practices.

So, Your Honor, the second unavoidable finding here is that DNR conducted a reasonable, good faith search designed to locate the records.

The last finding, Your Honor, that is inescapable here is that the reasons why there was a delay was because of Mr. Holder's repeated, redundant, and vexatious requesting of records under the MPIA.

In fact, Your Honor, in Glass, they specifically described a requester like Mr. Holder and they said -- this is Judge McDonald speaking -- that, "It is sometimes the case that a requester, suspicious of a particular agency or of a government in general, submits a broadly worded request, intending to afford the agency no excuse for not producing the records that the requester really wants.

"Literal compliance with such a request, however, would often require such a diversion of resources and agency time as to amount to a huge expense." That description, Your Honor, is spot on here.

What we have here is a requester who is very suspicious of DNR. He is in a dispute with DNR and he has bombarded DNR with dozens of very difficult MPIA requests.

Compliance with Mr. Holder's requests clearly, from what Mr. Burrows testified to, required a substantial diversion of DNR resources and time.

Mr. Holder, he submitted over 60 requests. He was constantly altering and tweaking them and adding to them. And he was submitting requests on top of requests when DNR hasn't even had a chance to respond to the previous requests.

And, Your Honor, this is very easily evident from Defense Exhibit A, where back in 2020, when DNR was trying to respond to the 070120 request, Mr. Holder ultimately submitted 20 additional requests before DNR could get out its response to the 070120 request.

And clearly, they were trying that whole time to get those records searched, reviewed, and produced. Mr. Holder just really is not giving DNR a reasonable chance to respond and produce before filing his next MPIA request.

Very few government agencies have the resources, time, and staff to handle such an onslaught, as Mr. Burrows testified. Responding to PIAs is not their primary duty. They have many, many, many other duties.

So, in the face of this, Your Honor, Mr. Burrows and his predecessor and the DNR staff, they performed remarkably in responding to Mr. Holder's requests. They have all been responded to.

So the last finding here, Your Honor, that is unavoidable, is that the reasons for any delay are due to Mr. Holder. With that being said, the standard, Your Honor, under 4-362(d)(1) is whether there was a knowing and willful denial of records.

Your Honor, with respect to the evidence related to knowing, the Defendants don't know that the documents Holder claims to exist are in their custody and retrievable through their reasonable search methods.

So the Defendants do not know that some document exists that they haven't produced. So there is no knowing violation.

The second part of it, Your Honor -- and by the way --

THE COURT: You are well beyond your closing time.

MR. ZACARIAS: Ten minutes?

THE COURT: No, five minutes is what I said.

MR. ZACARIAS: Oh, okay. I am sorry.

THE COURT: You said five minutes for your cross, or, I guess, questions of Mr. Holder but that went much longer.

MR. ZACARIAS: All right. So I will just basically conclude by requesting that this Court find in the Defendant's favor. Thank you.

THE COURT: Okay. Anything you want to say in closing, Mr. Holder?

MR. HOLDER: Just briefly, Your Honor.

THE COURT: Yes, sir. You get the same chance.

PLAINTIFFS CLOSING ARGUMENT

MR. HOLDER: First off, again, DNR's mootness argument is just outstanding, given the public policy here.

Maryland authority, I would refer the Court to Ireland* versus Sheering*, for the authority on Maryland and mootness, the Federal authority of Payne versus Air Force and that's supported by the Court's holding in Lloyd versus Supervisor of Elections.

In this case, with the crystallized policy here, we have seven denials. There is no testimony in the record that they ever intended to send me a 10 day letter, to reply in 30 days, to provide the documents.

And actually, the exhibit from Mr. Burrows's testimony that there was a PIA worker who did work in good faith, I didn't sue him. I worked with him in good faith. You could read that exhibit. It speaks for itself.

It's a November 21st, 2022 request. We worked through it. He tells me what he has. I say, "Okay, let's do it. I'll pay you the fees." And, you know, it's as simple as that.

You know, they want to characterize things as a repeated request. I wasn't getting answers. I wasn't getting anything. I wasn't getting any documents. Nothing started flowing until suit was filed.

And they didn't look. Mr. Burrows testified, "Did you ask Jeannie Lippert?" He doesn't know. He doesn't know if they asked Jeannie Lippert. Doesn't know if they asked Program Open Space.

In fact, I think he testified he didn't ask he didn't ask Open Space. And that's where the documents would be. Didn't ask. Didn't ask anybody specifically for an agreement with Holly Nicodemus. And I'm telling them, that's what I want. He at least should have to ask somebody.

But that would be reasonable, I think. Under the circumstances, it would be reasonable to ask the specific person for the specific document if they have it.

I would just submit to this Court that a ruling in favor of the Defendants in any way -- I had to fight. I had to spend $170. I had to spend some of my time. I'm not asking for money for my time. I donate that. I don't have attorney's bills.

But 362, it says litigation costs. Clearly, you gotta pay to file a complaint. Had to pay to serve some subpoenas. Got a couple hundred bucks.

A finding of this Court that they owe me $5 would set a public policy that it is a waste of taxpayer resources, that you should work with requesters in good faith. And the courts, quite frankly, don't want to spend a day arguing over documents. Thank you.

THE COURT: I am prepared to render a decision. I have listened carefully. As I said, I reviewed the file prior to coming in here today. I have taken into account the testimony provided, as well as the opening statements and closing arguments that have been made.

I am sorry, Mr. Holder, but I agree with the defense on this. I am satisfied that the Department of Natural Resources has responded to all of your public information requests and that they have produced everything within their possession, excluding exempted records.

I found Mr. Burrows to be very credible and I accepted his testimony. I don't have concerns about Mr. Holder's credibility. I do have concerns he seems to be exceedingly suspicious of how the government interacts with him.

Maybe he has good reason to feel that way given what he has been through. But that, at least in my mind, impacted my decision on what weight to give his testimony.

I am satisfied that the Department of Natural Resources has not knowing and willfully denied access to public records.

I am satisfied the Department of Natural Resources made diligent and good faith searches and used appropriate and reasonable methods to capture the requested information.

Quite frankly, their efforts are just above and beyond as far as I am concerned. I mean, we are talking thousands of hours of manpower. There were delays in the Department of Natural Resources responding.

But a large basis of those delays -- a large reason for those delays are the complexity of what is being requested; the number of requests, which were significant. And despite that, DNA still continued to work to provide Mr. Holder what it was that he asked for.

I am also not satisfied that Mr. Holder has proven that there are any damages that he can recoup in this case. So, I am going to find in favor of the Defendant and you all are free to go.

MR. HOLDER: Thank you, Your Honor.

MR. ZACARIAS: Thank you, Your Honor.

THE COURT: The exhibits may be returned. The paper ones. We scan them all in so we have them electronically. They will be part of the Court file in case there is further litigation regarding this case.

MR. ZACARIAS: So we can take them off your hands.

THE COURT: You can absolutely take them off our hands.

MR. ZACARIAS: You are going recycle the binder, I assume.

THE COURT: Yes, sir.

THE CLERK: All rise.

(Whereupon, at 4:32 p.m., the proceedings concluded.)

CERTIFICATE OF TRANSCRIBER

We hereby certify that the proceedings in In the Matter of Justin Holder, Civil No. C-02-CV-22-001474 heard in the Circuit Court for Anne Arundel County, Maryland, on April 5, 2024, were recorded by means of digital recordings.

We further certify that to the best of our knowledge and belief, pages 1 through 201 constitute a complete and accurate transcript of the proceedings as transcribed by us.

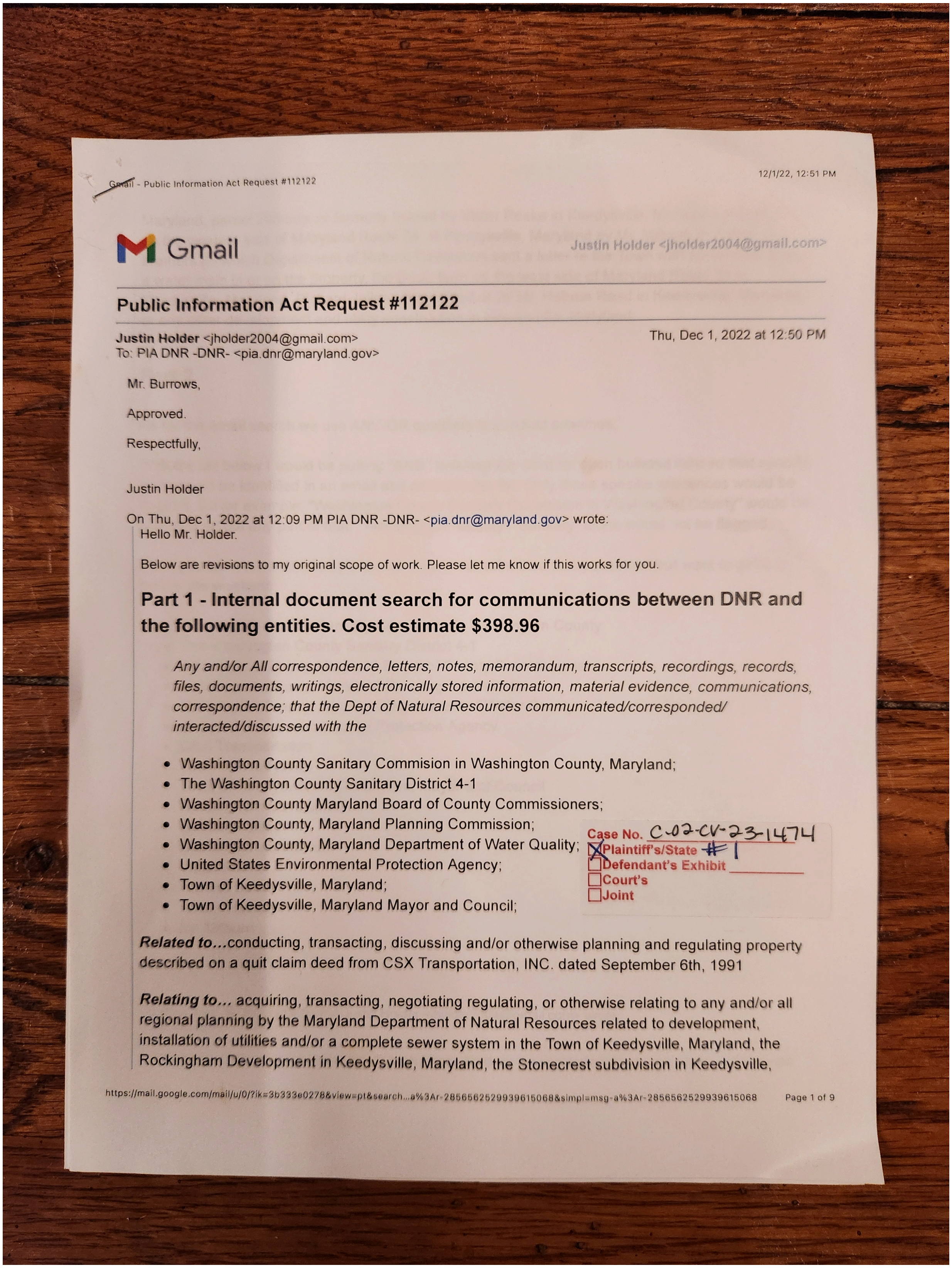
We further certify that we are neither relatives to nor employees of any attorney or party herein, and that we have no interest in the outcome of this case.

In witness whereof, we have affixed our signatures this 15th day of June 2024.

By:

/s/ Pamela H. Malech
Pamela H. Malech
Transcriber, CompuScribe

/s/ Laura Jackson
Laura Jackson
Transcriber, CompuScribe



Gmail - Public Information Act Request #112122 12/1/22, 12:51 PM

Gmail Justin Holder <jholder2004@gmail.com>

Public Information Act Request #112122

Justin Holder <jholder2004@gmail.com> Thu, Dec 1, 2022 at 12:50 PM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>

Mr. Burrows,

Approved.

Respectfully,

Justin Holder

On Thu, Dec 1, 2022 at 12:09 PM PIA DNR -DNR- <pia.dnr@maryland.gov> wrote:

> Hello Mr. Holder.
>
> Below are revisions to my original scope of work. Please let me know if this works for you.
>
> ### Part 1 - Internal document search for communications between DNR and the following entities. Cost estimate $398.96
>
> *Any and/or All correspondence, letters, notes, memorandum, transcripts, recordings, records, files, documents, writings, electronically stored information, material evidence, communications, correspondence; that the Dept of Natural Resources communicated/corresponded/ interacted/discussed with the*
>
> - Washington County Sanitary Commision in Washington County, Maryland;
> - The Washington County Sanitary District 4-1
> - Washington County Maryland Board of County Commissioners;
> - Washington County, Maryland Planning Commission;
> - Washington County, Maryland Department of Water Quality;
> - United States Environmental Protection Agency;
> - Town of Keedysville, Maryland;
> - Town of Keedysville, Maryland Mayor and Council;
>
> ***Related to...***conducting, transacting, discussing and/or otherwise planning and regulating property described on a quit claim deed from CSX Transportation, INC. dated September 6th, 1991
>
> ***Relating to...*** acquiring, transacting, negotiating regulating, or otherwise relating to any and/or all regional planning by the Maryland Department of Natural Resources related to development, installation of utilities and/or a complete sewer system in the Town of Keedysville, Maryland, the Rockingham Development in Keedysville, Maryland, the Stonecrest subdivision in Keedysville,

Case No. C-02-CV-23-1474
☒ Plaintiff's/State #1
☐ Defendant's Exhibit
☐ Court's
☐ Joint

https://mail.google.com/mail/u/0/?ik=3b333e0278&view=pt&search...a%3Ar-2856562529939615068&simpl=msg-a%3Ar-2856562529939615068 Page 1 of 9

Gmail **Justin Holder <jholder2004@gmail.com>**

Public Information Act Request #112122

Justin Holder <jholder2004@gmail.com> Thu, Dec 1, 2022 at 12:50 PM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>

Mr. Burrows,

Approved.

Respectfully,

Justin Holder

On Thu, Dec 1, 2022 at 12:09 PM PIA DNR -DNR- <pia.dnr@maryland.gov> wrote:

> Hello Mr. Holder.
>
> Below are revisions to my original scope of work. Please let me know if this works for you.
>
> ## Part 1 - Internal document search for communications between DNR and the following entities. Cost estimate $398.96
>
> > *Any and/or All correspondence, letters, notes, memorandum, transcripts, recordings, records, files, documents, writings, electronically stored information, material evidence, communications, correspondence; that the Dept of Natural Resources communicated/corresponded/ interacted/discussed with the*
>
> - Washington County Sanitary Commision in Washington County, Maryland;
> - The Washington County Sanitary District 4-1
> - Washington County Maryland Board of County Commissioners;
> - Washington County, Maryland Planning Commission;
> - Washington County, Maryland Department of Water Quality;
> - United States Environmental Protection Agency;
> - Town of Keedysville, Maryland;
> - Town of Keedysville, Maryland Mayor and Council;
>
> ***Related to…***conducting, transacting, discussing and/or otherwise planning and regulating property described on a quit claim deed from CSX Transportation, INC. dated September 6th, 1991
>
> ***Relating to…*** acquiring, transacting, negotiating regulating, or otherwise relating to any and/or all regional planning by the Maryland Department of Natural Resources related to development, installation of utilities and/or a complete sewer system in the Town of Keedysville, Maryland, the Rockingham Development in Keedysville, Maryland, the Stonecrest subdivision in Keedysville,

> Maryland, parcel 293 now or formerly owned by Victor Peake in Keedysville, Maryland, a subdivision on the western side of MAryland Route 34 in Keedysville, Maryland by Mr. Milburn or Ketler brothers (in which Department of Natural Resources sent a letter to the Town with permission to lay a water main in or on the property, the Doub farm on the west side of Maryland Route 34 in Keedysville, Maryland, Richard Jolles who resided at 22 Mt. Hebron Road in Keedysville, Maryland, or any other development and utility construction in Keedysville, Maryland;
>
> ## Part 2
>
> As for the email search we use AND/OR qualifiers to conduct searches.
>
> With the list below I would be putting "AND" between the word for each bulleted item so that specific term would be identified in an email and added to the list. Only those specific references would be flagged. So for example, "Washington County Sanitary Commision in Washington County" would be matched up but any part of that, "Washington" "County" "Sanitary" alone would not be flagged.
>
> So, if you want to update this please do. I have not submitted the request yet but want to get it in before the weekend.
>
> - Washington County Sanitary Commision in Washington County
> - The Washington County Sanitary District 4-1
> - Washington County Maryland Board of County Commissioners
> - Washington County, Maryland Planning Commission
> - Washington County, Maryland Department of Water Quality
> - United States Environmental Protection Agency
> - CSX Transportation
> - Town of Keedysville
> - Town of Keedysville AND Maryland Mayor and Council
> - Rockingham Development
> - quit claim deed
> - Stonecrest subdivision
> - Victor Peake
> - Richard Jolles
> - Ketler brothers
> - Mr. Milburn
>
> Anthony
>
> On Wed, Nov 30, 2022 at 4:56 PM Justin Holder <jholder2004@gmail.com> wrote:
>
> > Mr. Burrows,
> >
> > Thank you. Once you recieve the emails back please send me the updated total and I will review and send the

> > check.
> >
> > This seems to be an extensive search. I understand the holidays are upcoming and I want the DNR and staff to enjoy this time and not be rushed. Please accept my offer to extend the statutory deadline 30 days on this request for a 60 day total; and an option to extend it another 30 to 90 days total if DNR so requires.
> >
> > I wish the Honorable Custodian and the DNR a wonderful holiday season.
> >
> > Have a great evening.
> >
> > Respectfully,
> >
> > Justin Holder
> >
> > On Wed, Nov 30, 2022, 4:38 PM PIA DNR -DNR- <pia.dnr@maryland.gov> wrote:
> >
> > > Hello Mr. Holder,
> > >
> > > If you want to proceed we'll begin to process your request. I will give you an updated number once I receive the emails back from our Information Technology Office.
> > >
> > > Then we would prefer a check, for the total amount, mailed to our office. Please make a check payable to "Maryland Department of Natural Resources" and mail to Maryland Department of Natural Resources, Public Information Act Manager, 580 Taylor Avenue, D4, Annapolis, Maryland 21401.
> > >
> > > Anthony
> > >
> > > On Wed, Nov 30, 2022 at 4:15 PM Justin Holder <jholder2004@gmail.com> wrote:
> > >
> > > > Mr. Burrows,
> > > >
> > > > Thank you for the information. Would you prefer I send a check, venmo, zelle, credit card or pay cash?
> > > >
> > > > Would you like $398.96 to start and then I can pay the rest once you do the first search; or just send the $1073.96 now?
> > > >
> > > > Thank you again for all the good work you do for our state. Have a great evening!
> > > >
> > > > Respectfully,
> > > >
> > > > Justin Holder
> > > >
> > > > On Wed, Nov 30, 2022, 3:28 PM PIA DNR -DNR- <pia.dnr@maryland.gov> wrote:
> > > >
> > > > > Hello Mr. Holder,
> > > > >
> > > > > Below you will find a **preliminary cost estimate* for your public information act request #112122. I have it broken down into two sections since one office will be doing the fulfillment for part of the request and another office will be working on the other.
> > > > >
> > > > > **Cost estimate for part 2 will depend on the number of emails returned from our search. I do feel it's an accurate estimate, if there is a major change I will be sure to notify you and make adjustments.*
> > > > >
> > > > > ## Part 1 - Internal document search for communications between

DNR and the following entities. Cost estimate $398.96

> *Any and/or All correspondence, letters, notes, memorandum, transcripts, recordings, records, files, documents, writings, electronically stored information, material evidence, communications, correspondence; that the Dept of Natural Resources communicated/corresponded/interacted/discussed with the*

- Washington County Sanitary Commision in Washington County, Maryland;
- The Washington County Sanitary District 4-1
- Washington County Maryland Board of County Commissioners;
- Washington County, Maryland Planning Commission;
- Washington County, Maryland Department of Water Quality;
- United States Environmental Protection Agency;
- Town of Keedysville, Maryland;
- Town of Keedysville, Maryland Mayor and Council;

Related to…conducting, transacting, discussing and/or otherwise planning and regulating property described on a quit claim deed from CSX Transportation, INC. dated September 6th, 1991

Related to… acquiring, transacting, negotiating regulating, or otherwise relating to any and/or all regional planning by the Maryland Department of Natural Resources

Related to… development, installation of utilities and/or a complete sewer system in the

- Town of Keedysville, Maryland,
- the Rockingham Development in Keedysville, Maryland,
- the Stonecrest subdivision in Keedysville, Maryland, parcel 293 now or formerly owned by Victor Peake in Keedysville, Maryland, a subdivision on the western side of Maryland Route 34 in Keedysville, Maryland

With work performed by… Mr. Milburn or Ketler brothers or Richard Jolles or any other development and utility construction in Keedysville, Maryland.

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Part 2 - Email search for correspondence from the following individuals: Cost estimate $675

> *Any and/or All emails from*

Jean Lippard, Nathan Beeman, George Forlifer, Jeffrey Bonnerwith, Gene F. Cheers, Mark

Spencer, and/or Mary Ironside

Search terms would include.

- Washington County Sanitary Commision in Washington County
- The Washington County Sanitary District 4-1
- Washington County Maryland Board of County Commissioners
- Washington County, Maryland Planning Commission
- Washington County, Maryland Department of Water Quality
- United States Environmental Protection Agency
- CSX Transportation
- Town of Keedysville
- Town of Keedysville AND Maryland Mayor and Council
- Rockingham Development
- quit claim deed
- Stonecrest subdivision
- Victor Peake
- Richard Jolles
- Ketler brothers
- Mr. Milburn

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Original Request:

Any and/or All correspondence, letters, emails, notes, memorandum, communications, transcripts, recordings, records, files, documents, writings, electronically stored information, material evidence, communications, correspondence;

that the Maryland Department of Natural Resources and/or it's agents

communicated/corresponded/interacted/discussed with the Washington County Sanitary Commision in Washington County, Maryland; The Washington County Sanitary District 4-1 the Washington County Maryland Board of County Commissioners; the Washington County, Maryland Planning Commission; the Washington County, Maryland Department of Water Quality; the United States Environmental Protection Agency; the Town of Keedysville, Maryland; and/or the Town of Keedysville, Maryland Mayor and Council;

when conducting, transacting, discussing and/or otherwise planning and regulating property described on a quit claim deed from CSX Transportation, INC. dated September 6th, 1991 and recorded among the land records of

> *Washington County, Maryland at Liber 1015 folio 796, a.k.a, the Weaverton to Roxbury Rail Trail, a.k.a. the abandoned branch of the Washington County Railroad, a.k.a. the Civil War Rail Trail (the "property");*
>
> *related to acquiring, transacting, negotiating regulating, or otherwise relating to any and/or all regional planning by the Maryland Department of Natural Resources related to development, installation of utilities and/or a complete sewer system in the Town of Keedysville, Maryland, the Rockingham Development in Keedysville, Maryland, the Stonecrest subdivision in Keedysville, Maryland, parcel 293 now or formerly owned by Victor Peake in Keedysville, Maryland, a subdivision on the western side of MAryland Route 34 in Keedysville, Maryland by Mr. Milburn or Ketler brothers (in which Department of Natural Resources sent a letter to the Town with permission to lay a water main in or on the property, the Doub farm on the west side of Maryland Route 34 in Keedysville, Maryland, Richard Jolles who resided at 22 Mt. Hebron Road in Keedysville, Maryland, or any other development and utility construction in Keedysville, Maryland;*
>
> *It may be useful to search communications from the following Department of Natural Resource employees, but not limited thereto: Jean Lippard, Nathan Beeman, George Forlifer, Jeffrey Bonnerwith, Gene F. Cheers, Mark Spencer, and/or Mary Ironside.*

We will proceed with the work upon receipt of your payment of the $1,073.96. Please make a check payable to "Maryland Department of Natural Resources" and mail to Maryland Department of Natural Resources, Public Information Act Manager, 580 Taylor Avenue, D4, Annapolis, Maryland 21401.

Pursuant to GP § 4-362, you are entitled to seek judicial review of this decision. You also have the option to file a complaint with the Public Information Act Compliance Board concerning the amount of the fee charged, see GP §4-1A - 01 et seq., and may also refer any concerns about this decision to the Public Access Ombudsman pursuant to GP §4-1B - 01 et seq.

Anthony
==
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On Mon, Nov 21, 2022 at 7:36 AM Justin Holder <jholder2004@gmail.com> wrote:

> Mr. Burrows,
>
> Thank you. Enjoy the Holiday and thank you and the MD DNR for all the hard work you do for our great state!
>
> Respectfully,
>
> Justin Holder

On Mon, Nov 21, 2022 at 5:08 AM PIA DNR -DNR- <pia.dnr@maryland.gov> wrote:

Hello Mr. Holder,

I am responding to your public information act request #112122 which asks for...

> *Any and/or All correspondence, letters, emails, notes, memorandum, communications, transcripts, recordings, records, files, documents, writings, electronically stored information, material evidence, communications, correspondence;*
>
> *that the **Maryland Department of Natural Resources** and/or it's agents*
>
> *communicated/corresponded/interacted/discussed with the Washington County Sanitary Commision in Washington County, Maryland; The Washington County Sanitary District 4-1 the Washington County Maryland Board of County Commissioners; the Washington County, Maryland Planning Commission; the Washington County, Maryland Department of Water Quality; the United States Environmental Protection Agency; the Town of Keedysville, Maryland; and/or the Town of Keedysville, Maryland Mayor and Council;*
>
> *when conducting, transacting, discussing and/or otherwise planning and regulating property described on a quit claim deed from CSX Transportation, INC. dated September 6th, 1991 and recorded among the land records of Washington County, Maryland at Liber 1015 folio 796, a.k.a, the Weaverton to Roxbury Rail Trail, a.k.a. the abandoned branch of the Washington County Railroad, a.k.a. the Civil War Rail Trail (the "property");*
>
> *related to acquiring, transacting, negotiating regulating, or otherwise relating to any and/or all regional planning by the Maryland Department of Natural Resources related to development, installation of utilities and/or a complete sewer system in the Town of Keedysville, Maryland, the Rockingham Development in Keedysville, Maryland, the Stonecrest subdivision in Keedysville, Maryland, parcel 293 now or formerly owned by Victor Peake in Keedysville, Maryland, a subdivision on the western side of MAryland Route 34 in Keedysville, Maryland by Mr. Milburn or Ketler brothers (in which Department of Natural Resources sent a letter to the Town with permission to lay a water main in or on the property, the Doub farm on the west side of Maryland Route 34 in Keedysville, Maryland, Richard Jolles who resided at 22 Mt. Hebron Road in Keedysville, Maryland, or any other development and utility construction in Keedysville, Maryland;*
>
> *It may be useful to search communications from the following Department of Natural Resource employees, but not limited thereto: Jean Lippard, Nathan Beeman, George Forlifer, Jeffrey Bonnerwith, Gene F. Cheers, Mark Spencer, and/or Mary Ironside.*

The Maryland Department of Natural Resources has received your request under the Public Information Act, Md. Code Ann., Gen. Prov. ("GP") §§ 4-101–4-601, seeking records.

We will contact you to notify you within 10 working days if there is a cost involved.

Anthony

CHANGING
Maryland
FOR THE BETTER

Anthony Burrows
Public Information Act Coordinator
Office of Communications
Department of Natural Resources
580 Taylor Ave., D-4
Annapolis, Maryland 21401
pia.dnr@maryland.gov

(410) 279-6094 (M)
Website | Facebook | Twitter

Click here to complete a three question customer experience survey.

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Anthony Burrows
Public Information Act Coordinator
Office of Communications
Department of Natural Resources
580 Taylor Ave., D-4
Annapolis, Maryland 21401
pia.dnr@maryland.gov
(410) 279-6094 (M)
Website | Facebook | Twitter

Click here to complete a three question customer experience survey.

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Public Information Act Coordinator
Office of Communications
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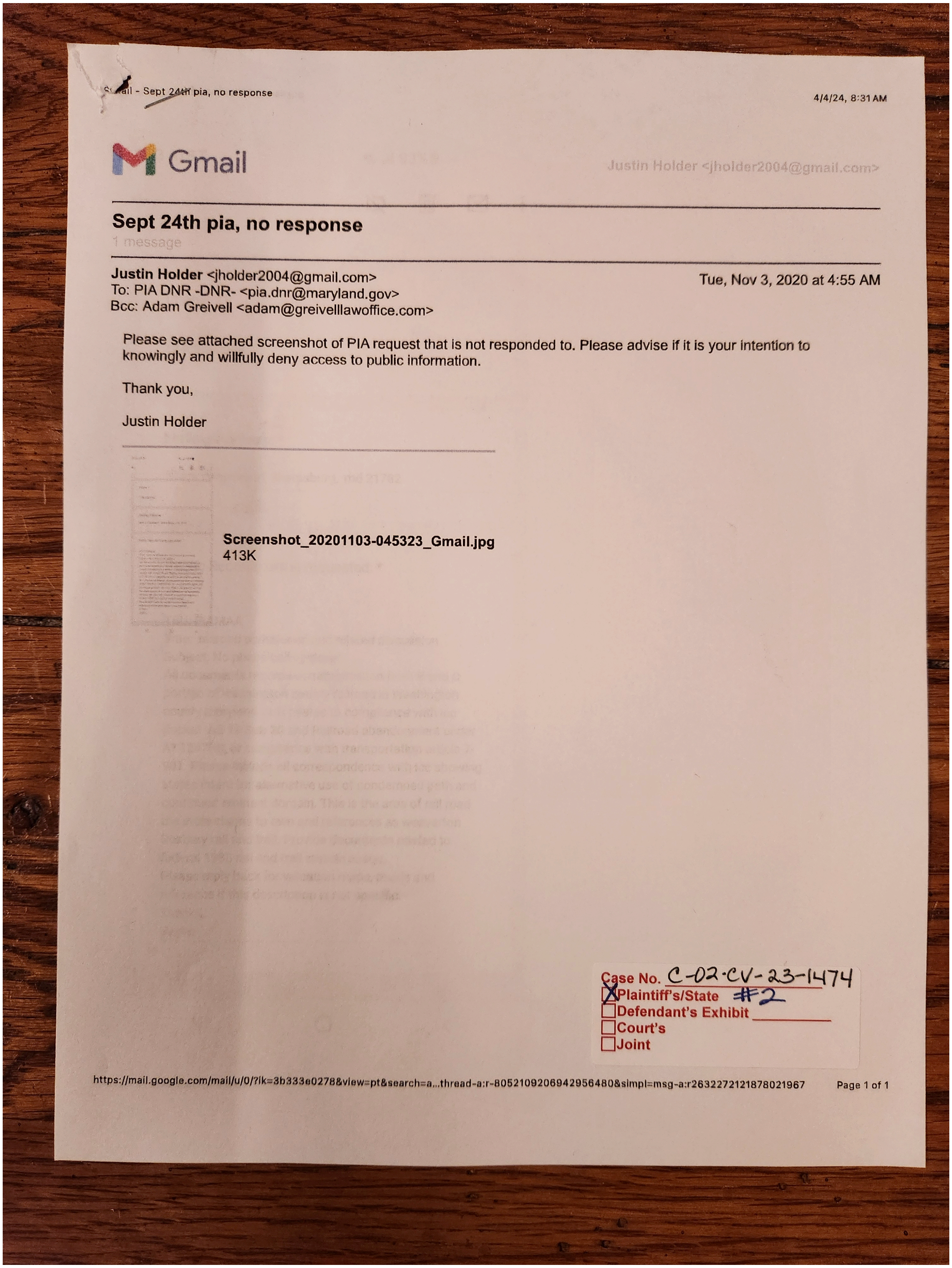
(410) 279-6094 (M)

Website | Facebook | Twitter

Click here to complete a three question customer experience survey.



Gmail Justin Holder <jholder2004@gmail.com>

Sept 24th pia, no response

1 message

Justin Holder <jholder2004@gmail.com> Tue, Nov 3, 2020 at 4:55 AM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Please see attached screenshot of PIA request that is not responded to. Please advise if it is your intention to knowingly and willfully deny access to public information.

Thank you,

Justin Holder

Screenshot_20201103-045323_Gmail.jpg
413K

Case No. C-02-CV-23-1474
☒ Plaintiff's/State #2
☐ Defendant's Exhibit
☐ Court's
☐ Joint

Gmail Justin Holder <jholder2004@gmail.com>

Sept 24th pia, no response

1 message

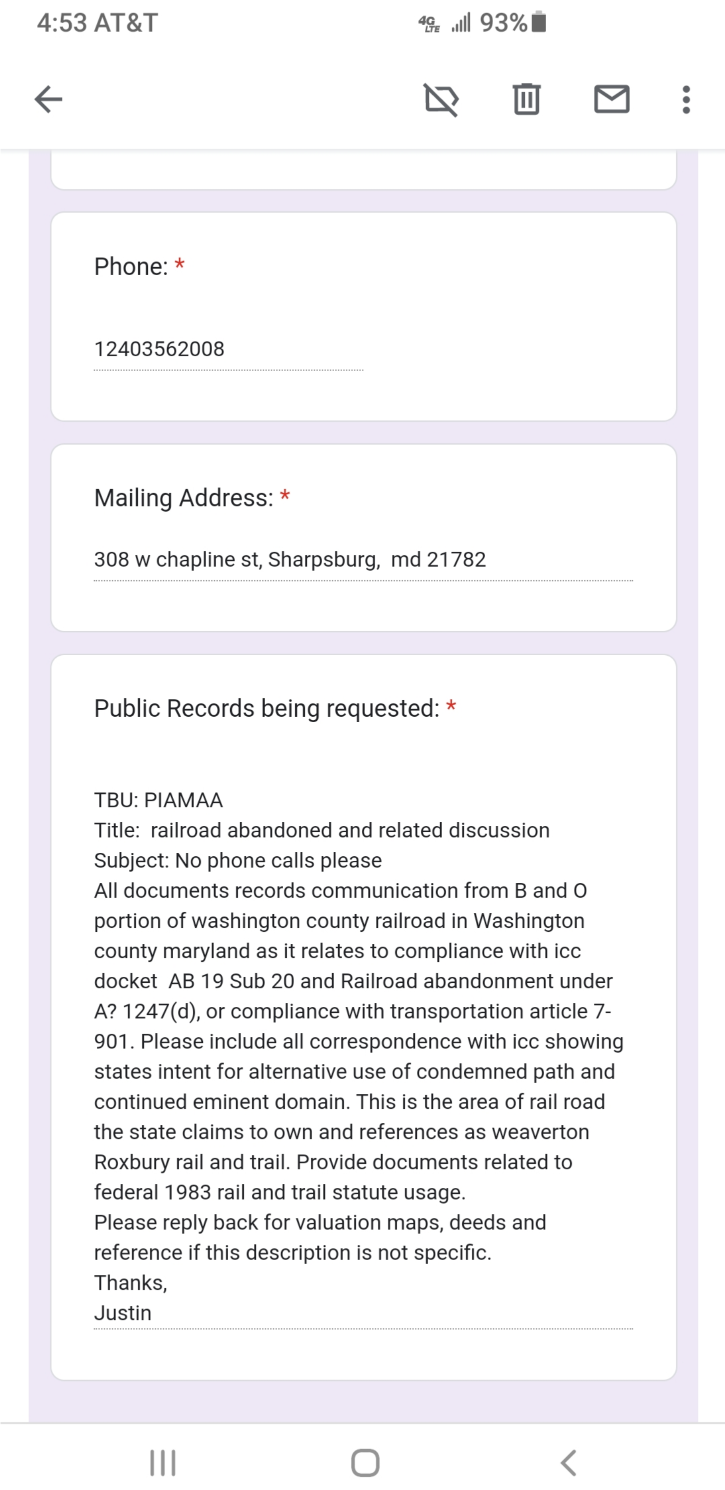
Justin Holder <jholder2004@gmail.com> Tue, Nov 3, 2020 at 4:55 AM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Please see attached screenshot of PIA request that is not responded to. Please advise if it is your intention to knowingly and willfully deny access to public information.

Thank you,

Justin Holder

Screenshot_20201103-045323_Gmail.jpg
413K



Phone: *

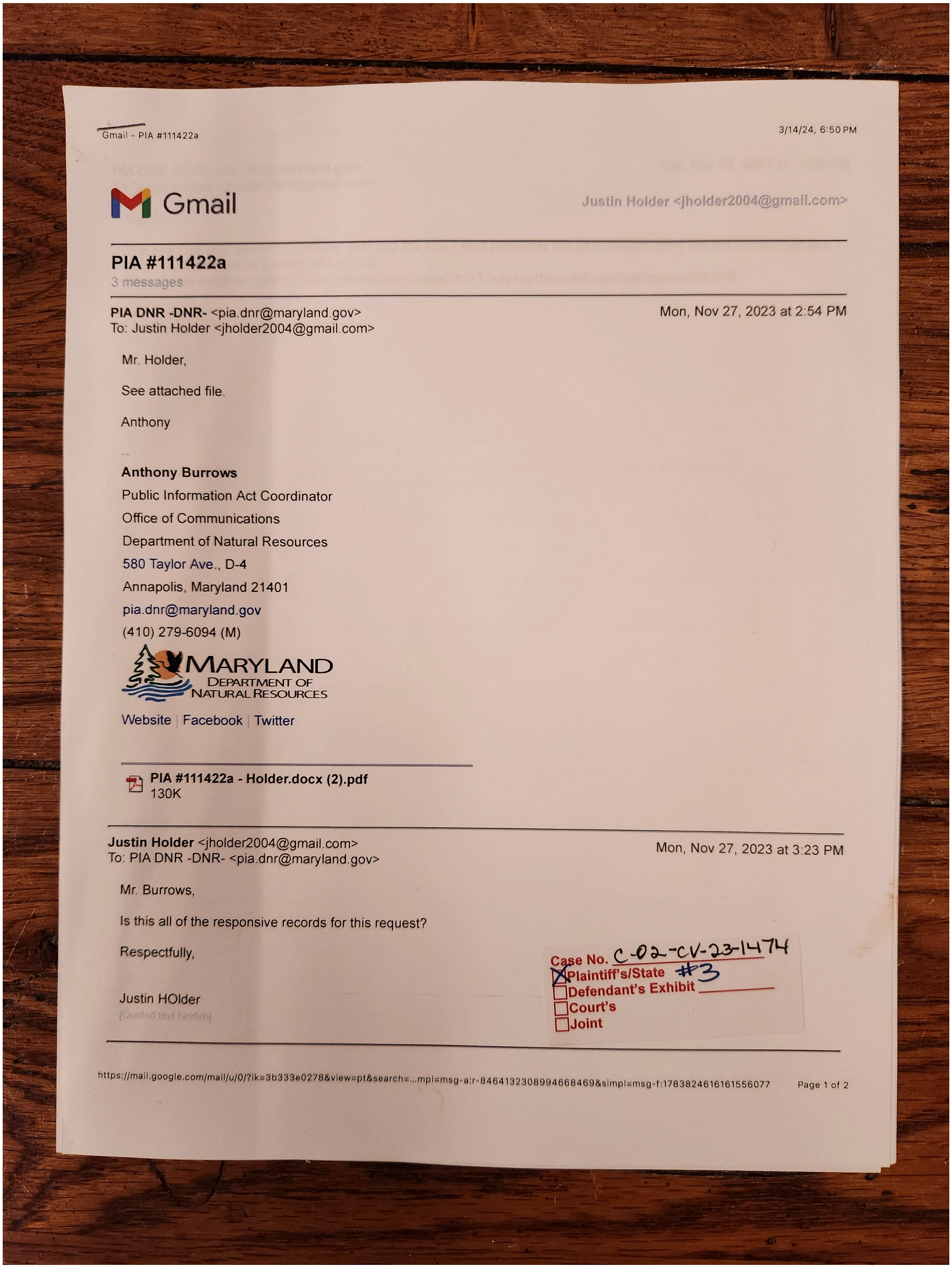
12403562008

Mailing Address: *

308 w chapline st, Sharpsburg, md 21782

Public Records being requested: *

TBU: PIAMAA
Title: railroad abandoned and related discussion
Subject: No phone calls please
All documents records communication from B and O portion of washington county railroad in Washington county maryland as it relates to compliance with icc docket AB 19 Sub 20 and Railroad abandonment under A? 1247(d), or compliance with transportation article 7-901. Please include all correspondence with icc showing states intent for alternative use of condemned path and continued eminent domain. This is the area of rail road the state claims to own and references as weaverton Roxbury rail and trail. Provide documents related to federal 1983 rail and trail statute usage.
Please reply back for valuation maps, deeds and reference if this description is not specific.
Thanks,
Justin



Gmail

Justin Holder <jholder2004@gmail.com>

PIA #111422a

3 messages

PIA DNR -DNR- <pia.dnr@maryland.gov> Mon, Nov 27, 2023 at 2:54 PM
To: Justin Holder <jholder2004@gmail.com>

Mr. Holder,

See attached file.

Anthony

--

Anthony Burrows
Public Information Act Coordinator
Office of Communications
Department of Natural Resources
580 Taylor Ave., D-4
Annapolis, Maryland 21401
pia.dnr@maryland.gov
(410) 279-6094 (M)

MARYLAND
DEPARTMENT OF
NATURAL RESOURCES

Website | Facebook | Twitter

PIA #111422a - Holder.docx (2).pdf
130K

Justin Holder <jholder2004@gmail.com> Mon, Nov 27, 2023 at 3:23 PM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>

Mr. Burrows,

Is this all of the responsive records for this request?

Respectfully,

Justin HOlder
[Quoted text hidden]

Case No. C-02-CV-23-1474
☒ Plaintiff's/State #3
☐ Defendant's Exhibit
☐ Court's
☐ Joint

Gmail Justin Holder <jholder2004@gmail.com>

PIA #111422a

3 messages

PIA DNR -DNR- <pia.dnr@maryland.gov> Mon, Nov 27, 2023 at 2:54 PM
To: Justin Holder <jholder2004@gmail.com>

Mr. Holder,

See attached file.

Anthony

--

Anthony Burrows
Public Information Act Coordinator
Office of Communications
Department of Natural Resources
580 Taylor Ave., D-4
Annapolis, Maryland 21401
pia.dnr@maryland.gov
(410) 279-6094 (M)

MARYLAND
DEPARTMENT OF
NATURAL RESOURCES

Website | Facebook | Twitter

PIA #111422a - Holder.docx (2).pdf
130K

Justin Holder <jholder2004@gmail.com> Mon, Nov 27, 2023 at 3:23 PM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>

Mr. Burrows,

Is this all of the responsive records for this request?

Respectfully,

Justin HOlder
[Quoted text hidden]

PIA DNR -DNR- <pia.dnr@maryland.gov> Tue, Nov 28, 2023 at 11:08 AM
To: Justin Holder <jholder2004@gmail.com>

Yes Sir,

The ones we sent earlier on October 25th and the files I sent yesterday are all available using the link below. The files I sent yesterday are in a folder off the root.
https://www.dropbox.com/scl/fo/9s1b4v4oy6wsj9mjaa60c/h?rlkey=nyrbosookhuahmce0egiqxpt8&dl=0

Anthony
[Quoted text hidden]

Gmail Justin Holder <jholder2004@gmail.com>

MPIA Railbanking Agreement/Cert of Convience

3 messages

Justin Holder <jholder2004@gmail.com> Tue, May 18, 2021 at 4:33 AM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>
Bcc: "Aaron D. Neal" <aneal@mhlawyers.com>, David Pembroke <rdpembroke1954@gmail.com>, Adam Greivell <adam@greivelllawoffice.com>

To whom it may concern,

Please provide the following documents and Public Information:

Specifically for the WRRT aka Washington County Railroad aka Abandoned B & O Railroad aka CWRT
Or simply the old railroad from Weaverton, MD to Roxbury, MD;

1. All I.C.C. Docket AB 19 sub 20 "certificate of public convenience and necessity from the Interstate Commerce Commission authorizing such abandonment"
Specifically "line" abandonedment and/or "Right of Way" Abandonedment.

2. All "railbanking" agreements/orders/applications/authorization in accordance with the 1983 (revised 1988) "National Trails System Act" section 8(d) or 16 U.S.C. 1247(d) or 49 C.F.R. 1152 et seq.

3. "Public use conditions" as prescribed by the 1976 Railroad Revitilization and Regulatory Reform Act.

4. Any Surface Transportation Board " environmental or historical preservation " requirements.

5. All communication with the Federal Government in which "railbanking " or The Railbanking Act is a subject of said conversation.

Information Request end.

Please provide a time and cost estimate 10 days.

Respectfully,

Justin Holder

PIA DNR -DNR- <pia.dnr@maryland.gov> Mon, May 24, 2021 at 1:20 PM
To: Justin Holder <jholder2004@gmail.com>
Cc: "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>

Mr. Holder,

We are working on coming up with a cost estimate for this Public Information Act Request. It may take a little longer than ten days from your submission date, and I wanted to give you that notice.
I will be in touch as soon as the estimate is completed.

Thanks,
Gene Deems
[Quoted text hidden]
--

Gene Deems
Public Information Act Coordinator
Office of Communications
Department of Natural Resources
580 Taylor Ave., D-4
Annapolis, Maryland 21401
pia.dnr@maryland.gov
(410) 260-8014 (O)
(410) 279-9735 (M)
Website | Facebook | Twitter

Click here to complete a three question customer experience survey.

Justin Holder <jholder2004@gmail.com> Mon, May 24, 2021 at 1:53 PM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>

Mr. Deems,

I appreciate your candor and good faith.
I will await your response.

Justin
[Quoted text hidden]

Gmail Justin Holder <jholder2004@gmail.com>

Public Information Act Request #051821

3 messages

PIA DNR -DNR- <pia.dnr@maryland.gov> Wed, May 26, 2021 at 3:16 PM
To: Justin Holder <jholder2004@gmail.com>
Cc: "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>

Justin K. Holder
308 West Chapline St.
Sharpsburg, MD 21782
jholder2004@gmail.com

Mr. Holder,

Thank you for your Public Information Act Request #051821.

You asked for the following:

"Specifically for the WRRT aka Washington County Railroad aka Abandoned B & O Railroad aka CWRT Or simply the old railroad from Weaverton, MD to Roxbury, MD;
1. All I.C.C. Docket AB 19 sub 20 "certificate of public convenience and necessity from the Interstate Commerce Commission authorizing such abandonment"
Specifically "line" abandonedment and/or "Right of Way" Abandonedment.
2. All "railbanking" agreements/orders/applications/authorization in accordance with the 1983 (revised 1988) "National Trails System Act" section 8(d) or 16 U.S.C. 1247(d) or 49 C.F.R. 1152 et seq.
3. "Public use conditions" as prescribed by the 1976 Railroad Revitilization and Regulatory Reform Act.
4. Any Surface Transportation Board " environmental or historical preservation " requirements.
5. All communication with the Federal Government in which "railbanking " or The Railbanking Act is a subject of said conversation."

Your request has been considered under the Public Information Act, Md. Code Ann., Gen. Prov. ("GP") §§ 4-101 – 4-601 et seq., and the regulations promulgated thereunder by the Maryland Department of Natural Resources (DNR), COMAR 08.01.06 and there are no responsive documents. There is no fee for this request.

This acquisition occurred when the Department of General Services had the responsibility for acquisitions.

Thank you,
Gene Deems
--

Gene Deems
Public Information Act Coordinator
Office of Communications
Department of Natural Resources
580 Taylor Ave., D-4
Annapolis, Maryland 21401
pia.dnr@maryland.gov
(410) 260-8014 (O)

(410) 279-9735 (M)
Website | Facebook | Twitter

Click here to complete a three question customer experience survey.

Justin Holder <jholder2004@gmail.com> Wed, May 26, 2021 at 3:18 PM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>, "Aaron D. Neal" <aneal@mhlawyers.com>

Mr. Deems,

Thank you very much for looking into this. I appreciate your services.

Please have a great holiday weekend sir.

Thanks,

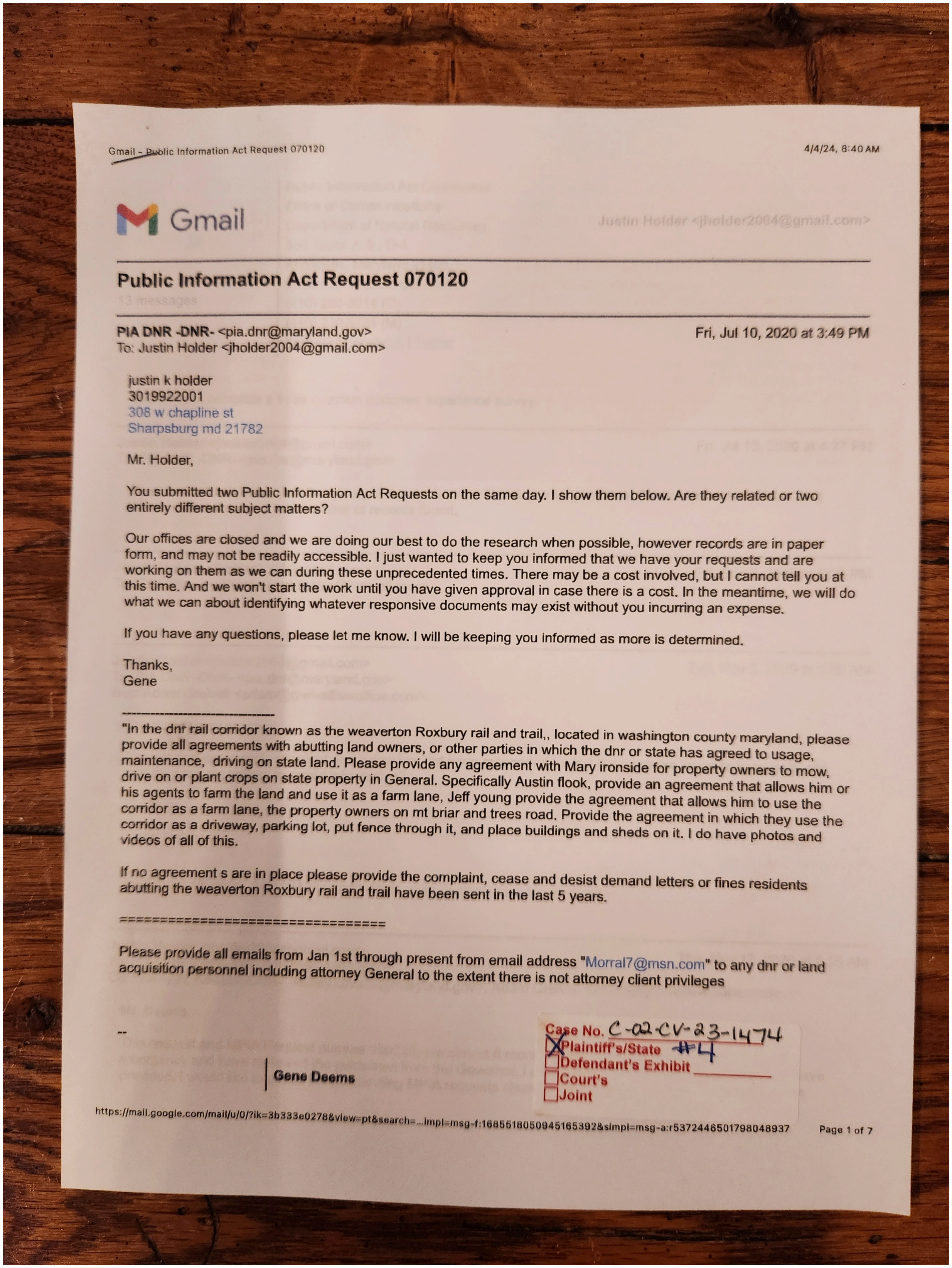
Justin Holder

[Quoted text hidden]

PIA DNR -DNR- <pia.dnr@maryland.gov> Wed, May 26, 2021 at 4:52 PM
To: Justin Holder <jholder2004@gmail.com>

Thanks. You have a good holiday weekend also.

[Quoted text hidden]



Gmail - Public Information Act Request 070120 4/4/24, 8:40 AM

Gmail Justin Holder <jholder2004@gmail.com>

Public Information Act Request 070120

PIA DNR -DNR- <pia.dnr@maryland.gov> Fri, Jul 10, 2020 at 3:49 PM
To: Justin Holder <jholder2004@gmail.com>

justin k holder
3019922001
308 w chapline st
Sharpsburg md 21782

Mr. Holder,

You submitted two Public Information Act Requests on the same day. I show them below. Are they related or two entirely different subject matters?

Our offices are closed and we are doing our best to do the research when possible, however records are in paper form, and may not be readily accessible. I just wanted to keep you informed that we have your requests and are working on them as we can during these unprecedented times. There may be a cost involved, but I cannot tell you at this time. And we won't start the work until you have given approval in case there is a cost. In the meantime, we will do what we can about identifying whatever responsive documents may exist without you incurring an expense.

If you have any questions, please let me know. I will be keeping you informed as more is determined.

Thanks,
Gene

"In the dnr rail corridor known as the weaverton Roxbury rail and trail,, located in washington county maryland, please provide all agreements with abutting land owners, or other parties in which the dnr or state has agreed to usage, maintenance, driving on state land. Please provide any agreement with Mary ironside for property owners to mow, drive on or plant crops on state property in General. Specifically Austin flook, provide an agreement that allows him or his agents to farm the land and use it as a farm lane, Jeff young provide the agreement that allows him to use the corridor as a farm lane, the property owners on mt briar and trees road. Provide the agreement in which they use the corridor as a driveway, parking lot, put fence through it, and place buildings and sheds on it. I do have photos and videos of all of this.

If no agreement s are in place please provide the complaint, cease and desist demand letters or fines residents abutting the weaverton Roxbury rail and trail have been sent in the last 5 years.

=================================

Please provide all emails from Jan 1st through present from email address "Morral7@msn.com" to any dnr or land acquisition personnel including attorney General to the extent there is not attorney client privileges

--

Gene Deems

Case No. C-02-CV-23-1474
☒ Plaintiff's/State #4
☐ Defendant's Exhibit
☐ Court's
☐ Joint

https://mail.google.com/mail/u/0/?ik=3b333e0278&view=pt&search=...impl=msg-f:1685518050945165392&simpl=msg-a:r5372446501798048937 Page 1 of 7

Justin Holder <jholder2004@gmail.com>

Public Information Act Request 070120

13 messages

PIA DNR -DNR- <pia.dnr@maryland.gov> Fri, Jul 10, 2020 at 3:49 PM
To: Justin Holder <jholder2004@gmail.com>

justin k holder
3019922001
308 w chapline st
Sharpsburg md 21782

Mr. Holder,

You submitted two Public Information Act Requests on the same day. I show them below. Are they related or two entirely different subject matters?

Our offices are closed and we are doing our best to do the research when possible, however records are in paper form, and may not be readily accessible. I just wanted to keep you informed that we have your requests and are working on them as we can during these unprecedented times. There may be a cost involved, but I cannot tell you at this time. And we won't start the work until you have given approval in case there is a cost. In the meantime, we will do what we can about identifying whatever responsive documents may exist without you incurring an expense.

If you have any questions, please let me know. I will be keeping you informed as more is determined.

Thanks,
Gene

"In the dnr rail corridor known as the weaverton Roxbury rail and trail,, located in washington county maryland, please provide all agreements with abutting land owners, or other parties in which the dnr or state has agreed to usage, maintenance, driving on state land. Please provide any agreement with Mary ironside for property owners to mow, drive on or plant crops on state property in General. Specifically Austin flook, provide an agreement that allows him or his agents to farm the land and use it as a farm lane, Jeff young provide the agreement that allows him to use the corridor as a farm lane, the property owners on mt briar and trees road. Provide the agreement in which they use the corridor as a driveway, parking lot, put fence through it, and place buildings and sheds on it. I do have photos and videos of all of this.

If no agreement s are in place please provide the complaint, cease and desist demand letters or fines residents abutting the weaverton Roxbury rail and trail have been sent in the last 5 years.

================================

Please provide all emails from Jan 1st through present from email address "Morral7@msn.com" to any dnr or land acquisition personnel including attorney General to the extent there is not attorney client privileges

--

Gene Deems

Public Information Act Coordinator
Office of Communications
Department of Natural Resources
580 Taylor Ave., D-4
Annapolis, Maryland 21401
pia.dnr@maryland.gov
(410) 260-8014 (O)
(410) 279-9735 (M)
Website | Facebook | Twitter

Click here to complete a three question customer experience survey.

Justin Holder <jholder2004@gmail.com> Fri, Jul 10, 2020 at 4:27 PM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>

The information requested is 2 seperate subjects matters. Thank you for your time. Please let me know how long this process takes, or a total number of records found.

[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Fri, Sep 4, 2020 at 6:35 PM
To: Carl Disque <attorneycarldisque@hotmail.com>

[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Tue, Nov 3, 2020 at 5:08 AM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

To whom it may concern:

This pia request in reply attached and below has not been responded to. Is it the agencies intent to knowingly and willfully deny my access to public information?

Thank you,

Justin Holder

On Fri, Jul 10, 2020, 3:50 PM PIA DNR -DNR- <pia.dnr@maryland.gov> wrote:

[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Thu, Nov 12, 2020 at 8:55 AM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>, Adam Greivell <adam@greivelllawoffice.com>

Mr. Deems,

This request and MPIA Request number 060220, are almost 6 monthes old. I appreciate the current state of emergency and have reviewed the guidelines from the Governor. I do thank you for the MPIA responses you have provided. I would like to get all the outstanding MPIA requests cleaned up in a timely manner. As of today, I am starting with the 2 oldest request and will than work forward. I have included the Attorney's, however I really want to make a good faith effort to resolve this between ourselves. The state would be responsible for my Attorney fees under the statute, and while it may consume less of my time to simple file suit, I do value my tax dollars. I also have faith you are a competent employee, and well trained in the law, and penalty.

We are 15 plus emails deep on request 060220, in a seperate email chain. The DNR provided emails back to November 29th, 2019. However town of Keedysville provided emails dating back to August of 2017. The DNR has excluded emails from Heidi Dudderar, Jane Roger's, and Janet. This MPIA has a direct impact on my coarse of action under the Environmental Standings Act, and utility interference. I would have thought as you stated "a check of the Gmail thunderbird server" is a quick and simple inquiry.

On this request 070120, I have never gotten an estimate. I have not gotten any documents. I have seen many letters, correspondence, and agreements reference throughout my other searches that are responsive to this request. This request is also very important. This request contains exculpatory material, that I believe I am due by the Brady Law, or a similar statute.

Mr. Deems I must ask this question 1 more time.
Is it your intention, as custodian of the Public Information held by DNR to "knowingly and willfully " deny myself that public information? I will unfortunately at this time have no choice but to assume a lack of timely response to be a complete denial, as the statutory time limit has been exceeded.

Thank you,

Justin Holder
[Quoted text hidden]

PIA DNR -DNR- <pia.dnr@maryland.gov> Thu, Nov 12, 2020 at 4:54 PM
To: Justin Holder <jholder2004@gmail.com>

Mr. Holder ,

In my November 5 email to you, which was a response to one of your revised Public Information Act Requests, I stated the following:

We have the other six that are in various stages of work and as soon as we can respond we will.

Thank you,
Gene Deems
[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Thu, Nov 12, 2020 at 6:37 PM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Mr. Deems,

I do appreciate the reply. I appreciate the acknowledged lapse in time beyond the statute in responding (knowingingly, with full and complete knowledge of). I knowingly will not relinquish any rights under the statute and must compell compliance.

You said " as soon as we can respond we will." Could you be so kind as to elaborate on what or who is prohibiting you from responding immediately? As without good cause I am left with your will to respond being the only reason.

Thank you,

Justin Holder
[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Sat, Nov 21, 2020 at 10:33 AM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Mr. Deems,

I have copied Ms. Talley Kovacs on this response. This request is at least 140 days past the statutory requirements. You have not refuted my claim of "knowingly and willfully " denying my request for public information. In addition to the request you have passed the limitations for my August 24th, 2020 "easement for main street" request, my very first June 2nd request for information about "another wrrt easement", my August 24th request for all easements granted to cross wrrt, my August 28th "hutzell correspondence " request, my October 21st "complaint log" request, and my September 17th "railroad abandonedment " request. There has been acknowledgement of all the above requests. They have come about organically whilst in my research I have found a need for the information.

At this time Mr. Deems you have failed to respond in the statutory limit of time, you have failed to provide any formal or legal authority to deny the request. I must opine you are "knowingly and willfully " violating the law or being directed to do so by a supervisor. It is always my last resort to provide notice and litigate a matter that can be decided in good faith. However in the MPIA I am encouraged by the statutes $1000 retaliation clause, and the states obligation to pay legal fees. Furthermore I am rarely inspired to file a statement charging a crime, I do humble ask you Mr. Deems to provide me with an explanation for this criminal behavior such that I may provide discretion. I have asked you 4 times at least for a lawful explanation of why you are "knowingly and willfully " denying me public information unlawfully.

Mr. Deems, If it is your supervisor or Ms. Kovacs herself requesting you deny this information please disclose that to me. I do want to grant you every opportunity to do what is lawful and right.

Ms. Kovacs, if the information I seek is inconvenient for the DNR to disclose, or otherwise makes your very vague and unsubstantiated "denial of any wrongdoing" by the state, or acquiesce of your colorable claims to property rights apparent, I opine that is not a lawful denial. Please refer to our other email chain (correspondence) for further details.

I would kindly ask Ms Kovacs to assist Mr. Deems in distilling the essence of his or the states 'writ large denial. Or please counsel Mr. Deems on his requirements under the MPIA statute. Or please be forthcoming and send myself or my Attorney Adam Greivell, whom has already spent his time at my expense in explaining in correspondence with Ms. Kovacs, a lawful or unlawful denial such that the next actions are clear. I will continue to ask for redress until I am certain that I have exhausted all administrative remedy, as I value the courts time and access.

Thank you,

Justin Holder
[Quoted text hidden]

PIA DNR -DNR- <pia.dnr@maryland.gov> Mon, Nov 23, 2020 at 1:52 PM
To: Justin Holder <jholder2004@gmail.com>
Cc: "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>, Rachel Eisenhauer -DNR- <rachel.eisenhauer@maryland.gov>

Mr. Holder,

We are working on your remaining Public Information Act Requests and they are in varying stages of review and completion. The remaining requests involve the manual review of thousands of pages of documents to find those responsive to your request, and to determine whether or not they are protected from disclosure, before we can respond. We appreciate your patience during these COVID times.

Gene Deems

[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Mon, Nov 23, 2020 at 2:02 PM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Mr. Deems,

The request is overdue. I desperately need the information. Ms. Kovacs is on notice as to exactly what that desperate need is. I do appreciate all the work the state is doing in adverse conditions. Unfortunately my liberty and rights are being restricted/infringed/decimated as the time passes.
Every passing day is a new violation of my rights and liberties. There is a reason the public through the legislature has made hiding public information a crime. Please provide myself with the date in which you shall have my request complete.

Thanks,

Justin Holder

[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Tue, Dec 8, 2020 at 12:41 AM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Mr. Deems,

You have blatantly, obviously, knowingly, and willfully shown no respect for Maryland Law. Your criminal behavior in this matter is disheartening. You have been respectful and cordial throughout our communications. I appreciate that respect and I do hope you have enjoyed the same from me.
You are purposefullly and intentional withholding public information for what I perceive to be maliscious reasons. I will be filing suit and a statement of charges with the Commissioners in order to find justice. I do hope Ms. Kovacs has competently advised you in these matters.

If you sense my displeasure in this email you are correct. I made a legitimate request for information that was ignored. However I do not like filing suit or charges 1 bit. I really want the information thats it. I also have a good idea why the state does not want me to have the information. I can assure you Mr. Deems if your liberty was at stake you would be just as dissatisfied with the custodian.

I do wish we had better terms as you were very helpful on June 2nd, 2020. The law is the law, I have exhausted all my efforts to negotiate in good faith. I am left with no choice in the matter.

Please have a good holiday. I will not be filing the statement's of charges until the new year. I will hold out hope the PIA gets answered before that and I just don't have the will to before Christmas.

Thank you,

Justin Holder

[Quoted text hidden]

PIA DNR -DNR- <pia.dnr@maryland.gov> Tue, Dec 8, 2020 at 8:47 AM
To: Justin Holder <jholder2004@gmail.com>
Cc: "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>

justin k holder
3019922001
308 w chapline st
Sharpsburg md 21782

Mr. Holder,

Thank you for your email. We have responded to numerous of your Public Information Act Requests this year. We have been working on many others under unusual conditions in these unprecedented times.

We continue to work on the others as fast as we can. As I have explained before there is a process that has to be followed.

Sincerely,
Gene Deems
[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Tue, Dec 8, 2020 at 11:23 AM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Mr. Deems,

Thank you for your response. I am genuinely concerned about this request in particular. It was made July 10th, 2020 or 5 monthes ago. I certainly have no interest in a statewide manhunt conducted by DNR personnel. I simply do no enjoy the utter waste of resources allocated to restrict my liberty, and consequently investigate the obscure, and abnormal actions of the DNR in said restrictions.

I am not sure you are privie to the details of the unlawful restrictions placed upon my liberties or that you have interest in that public information that contains said details. However it is also not your reputation, liberty, and emotional well being that is at stake. I again appreciate your efforts and candor in this matter. We are unfortunately in a very adverse position by duty, however I do respect your professionalism.

Please allow me to inquire further into process and time spent. As I said it is not in mine or the publics interest to spend hours let alone days if a search can be targeted. You said thousands of documents. Please quantify that to your best estimate 5,000, 10,000, 100,000 documents?
You said days. Have you been keeping a log sheet?
Those 2 questions seem straight forward and very easy to answer. That information will be greatly appreciated in helping me target the search and build good faith. I do not defer any rights in the MPIA statute, however I do appreciate candor and good faith, and defer prosecution to facilitate resolution. I was very forthcoming throughout this process that my preference is to find the information, not create more legal work for Ms. Kovacs.

In addition to the 2 above questions, I have 1 more. Please be so kind to promptly provide me an answer to the 2 from above, and 1 additional questions:

1. How many estimated total records does my search entail?

2. Have you kept a log sheet of time spent?

3. Have you found 1 Citation, fine, ticket, charge, or other civil legal action, other than on June 8th, 2020, issued, filed, or otherwise delivered to any person that is directly related to land use, driving, clearing, damage to rocks minerals and vegetation at or near the Weaverton Roxbury Rail Trail/civil war rail trail/abandoned line of the Washington County Railroad, from 1991 to present?

Just 1 fine, lawsuit, arrest (other than dwi/dui or alcohol citations) would come as a surprise to me. I would be strangely comforted in knowing I am not alone in the world. I will please ask for an answer to those 3 questions by weeks end. I hope Ms. Kovacs could also be so courteous to find the time to answer my 3 questions to her from November 21st as well. I will add those 3 question here for convenience to Ms. Kovacs as well. Perhaps if the custodian could familiarize himself with the essence of the grievance I am attempting to distill, Mr. Deems may be better informed to categorize the records I seek.

1. Why did Mary Ironsides direct DNR Officers to interfere with/block/obstruct or otherwise hinder the passage of a record-title/express/public/prescriptive easement/road on May 29th, 2020?

2. Why did Mary Ironsides order DNR officers to act in opposition of Department of Natural Resources Title 5-406 (b) (2) and policies described by Mr. Eshleman in his August 4th, 2017 letter to hinder my use as licensee/invitee/manager of claim to right under equitable title?

3. Why did Cody Litton, and Mary Ironsides send/post or otherwise disseminate defamatory media (video.mov sent by Christine Morral to Cody Litton in May 29th, 2020 email) when they had public and private knowledge the content of said media was slanderous and fraudulent?

Respectfully,

Justin Holder

[Quoted text hidden]

Gmail Justin Holder <jholder2004@gmail.com>

Public Information Act Request #070120

2 messages

PIA DNR -DNR- <pia.dnr@maryland.gov> Fri, Dec 18, 2020 at 9:41 AM
To: Justin Holder <jholder2004@gmail.com>

justin k holder
3019922001
308 w chapline st
Sharpsburg md 21782
jholder2004@gmail.com

Mr. Holder,

Thank you for your Public Information Act #070120.

You asked for the following:

"In the dnr rail corridor known as the weaverton Roxbury rail and trail,, located in washington county maryland, please provide all agreements with abutting land owners, or other parties in which the dnr or state has agreed to usage, maintenance, driving on state land. Please provide any agreement with Mary ironside for property owners to mow, drive on or plant crops on state property in General. Specifically Austin flook, provide an agreement that allows him or his agents to farm the land and use it as a farm lane, Jeff young provide the agreement that allows him to use the corridor as a farm lane, the property owners on mt briar and trees road. Provide the agreement in which they use the corridor as a driveway, parking lot, put fence through it, and place buildings and sheds on it. I do have photos and videos of all of this.
If no agreement s are in place please provide the complaint, cease and desist demand letters or fines residents abutting the weaverton Roxbury rail and trail have been sent in the last 5 years."

Your request has been considered under the Public Information Act, Md. Code Ann., Gen. Prov. ("GP") §§ 4-101 – 4-601 et seq., and the regulations promulgated thereunder by the Maryland Department of Natural Resources (DNR), COMAR 08.01.06 and the responsive documents will be sent via Google Drive. You will receive an separate email asking you to access the files.

Please confirm when you receive the email and please download all of the documents as they will not remain in the drive indefinitely. Google Drive gives you the option to open the emails with various platforms and or a viewer. You will have to decide how you want to manage those. There is no fee for this request.

Thank you.

Gene Deems
--

Gene Deems
Public Information Act Coordinator
Office of Communications
Department of Natural Resources
580 Taylor Ave., D-4
Annapolis, Maryland 21401

pia.dnr@maryland.gov
(410) 260-8014 (O)
(410) 279-9735 (M)
Website | Facebook | Twitter

Click here to complete a three question customer experience survey.

Justin Holder <jholder2004@gmail.com> Fri, Dec 18, 2020 at 11:23 AM
To: Adam Greivell <adam@greivelllawoffice.com>

[Quoted text hidden]

Justin Holder <jholder2004@gmail.com>

DRAFT: Public Information Act Requests #070120 #082420 #082820 #091720 and #112720

9 messages

PIA DNR -DNR- <pia.dnr@maryland.gov> Fri, Dec 18, 2020 at 1:25 PM
To: Justin Holder <jholder2004@gmail.com>

justin k holder
12403562008
308 west chapline st
Sharpsburg md 21782
jholder2004@gmail.com

Mr. Holder,

This is a follow up to the google drive accumulation of documents that were recently shared with you.

While the folder is named PIA 070120, the documents in this folder are responsive to PIA 070120 and many are also responsive to the additional PIAs listed below. There is a great deal of overlap, so parsing it out would not be appropriate hence the reference to the below PIAs.

#070120

#082420

#082820

#091720

#112720

Regarding withholding:

One (1) cover letter dating from 1995 from the Attorney General's Office to DNR, providing legal advice, has been withheld on the grounds of Attorney Client privilege.

Regarding redaction:

Certain documents contained in this collection have personal and confidential information that has been redacted. (These redactions are very minimal and consist only of personal addresses and phone numbers).

Please look through these documents and all of your Public Information Act Requests. I believe we have addressed them all, with the exception of the one requesting water quality publications from the 1970s, which we are trying to locate, if they exist.

Remember a Public Information Act request is for "records" or documents. It does not give the coordinator (me) the ability to answer questions or discuss anything. It is collecting, reviewing, redacting or withholding if necessary, and providing documents, if they exist.

I thank you for you patience while we were trying to respond to all of your requests during these unprecedented times.

We have not charged you for any of the Public Information Act Requests that you have made and we have now fulfilled.

Thank you,
Gene Deems
--

Gene Deems
Public Information Act Coordinator
Office of Communications
Department of Natural Resources
580 Taylor Ave., D-4
Annapolis, Maryland 21401
pia.dnr@maryland.gov
(410) 260-8014 (O)
(410) 279-9735 (M)
Website | Facebook | Twitter

Click here to complete a three question customer experience survey.

Justin Holder <jholder2004@gmail.com> Fri, Dec 18, 2020 at 2:12 PM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "PIA.Ombuds" <pia.ombuds@oag.state.md.us>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Mr. Deems,

I appreciate the response. I will review the Google Drive documents and let you know if I have any questions. Please allow me time to do so. Than we can work together as a "draft" response to get the official response nailed down.

I truly appreciate your candor and assistance. The information is all I seek.

Have a good weekend,

Justin Holder
[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Sat, Dec 19, 2020 at 12:29 AM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "PIA.Ombuds" <pia.ombuds@oag.state.md.us>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Mr. Deems,

I had a chance to look at the Google Drive Files. I did not comb through them for complete review, I just categorized the files. This "draft" is incomplete. I will list out below the request and my notes using the date generated pia file numbers:

#070120

The drive file related to this request. I downloaded 15 files which were very well organized and thorough. I would expect no less from the State of Maryland. I estimate about 60 priority easements and have counted over 100 encumbrances from the cad file from the survey thus far. I also have a personal relationship with most of the abandoned railroad neighbors. I am looking for the letters telling DNR to cease claim to land, or letters concerning sheds and fences. I asked specifically for Austin Flook and Jeffrey Young in the MPIA.

I did not see one fine, Citation, lawsuit or legal demand letter. I did not expect to see anything to this extent. I believe my June 8th fines to be a unique occurrence.

I am very satisfied with the 15 packages sent. Could I just come down and look at the other 100 or so files like them? This would save staff time for you.

#082420

this was the easement for main street in keedysville. All emails related to the granting of it.

Let me explain further. The town of Keedysville provided me an MPIA with emails from Shane Johnston dating back to 2017 concerning the easement near Antietam dr, which you answered Friday very thoroughly. However Dnr has not provided any communications before 2019.

So if I were to get the communications leading into the main street easement perhaps I will be able to correlate or corroborate Keedysvilles MPIA. I have to do this now because I have found discrepancy in other MPIA scan and copy documents as well as deleted and trashed files and attachments.

I have seen the BPW in other request pass easement in 4 weeks and Keedysville is blaming the 3 year delay on clean drinking water on Dnr. I have just been waiting on the additional emails to discern the truth here.

I can ask Keedysville to produce the outlook files for the emails if you would be interested in that to research?

#082820

Hutzell letters. I saw just 1 letter and a discussion on the meeting. I expected a more elaborate file however 112720 goes into detail so I will get into that in 2 lines

#091720

Nothing included on icc and stuff abandonedment documents.. I am certain there is a large file here, we will need to get them, again I can just come down and grab it all and scan through it. I don't want to take up your time.

#112720

the aug 4th 1994 letter you provided earlier and in the drive file today talks about fill title reports. I want that extensive report. I know there was a "wagon road" it could be the oldest road in the state perhaps the great Philadelphia Wagon road. This road is well documented and on title as easement for 25 antietam dr. The easement expressly did not burden the railroad, but did prescriptive per valuation maps. I was going to see how dnr interpreted the title search

Completed review, incomplete

Furthermore and in conclusion Mr. Drems:

In my mind you went to a filing cabinet pulled out 15 folders. For example you pulled the mullendore file, copied it,

redacted and scanned it. Just FYI Adobe or most pdf software will redact, it saves paper.
How long does that take you to scan the folder in? I would imagine dnr has a good piece of equipment.
I can scan to pdf with my cell phone. I can redact personal information and prefer to comply with the law. I am getting pretty accustomed to what can be disclosed and what can not be. I also understand reasonable discretion and public interest. I have no use for private phone numbers etc. I will probably post this as addendum to my article or summary so I would redactvthe private names like you did.

Thank you for mentioning the 1995 legal advice letter. You have made a valid argument of priveledge. The only thing I would ask is to use the Brady laws to determine if it is exculpatory in my criminal fines. The state has to produce exculpatory evidence in its possession. The law has some loopholes for officers and such. We can let lawyers argue all that. The notation, candor and transparency is much appreciated.

This type of communication is so much better than before. I have so much information I need. It seems like a huge waste of resources to get a little, than organically see more bread crumbs, and follow those. The state may see it as nickel and diming or bypassing the 2 hour requirement. I promise its not. I had no idea you guys did title reports until I saw the 1994 letter. I had no idea about the 208 andc303e plans until I finally got the 201. On the other hand I am trying to avoid a huge broad request with tons of fees that I end up with bankers boxes I don't need. Supoena is a resource intensive process. I could scan in what I want than subpoena what may be needed in court, if this doesn't get resolved in good faith.

I hope this was helpful to you in understanding my needs. I will do all I can to minimize my resources used, but I need the information for a few purposes and I can not leave any stones unturned. I am willing to drive in at your convenience. MDE sits me down at a table with huge stacks of whatever I ask. My request take them 10 or 15 minutes to deal with. Just pulling and replacing files.
I can sign off on custodial responsibilities and keep a copy of the OAG MPIA Manual on hand to reference. I respect the law.

Please let me know how we should proceed.

Thank you,

Justin Holder

Please note I just kinda vomited my notes out to you since this is a "draft".
[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Tue, Dec 22, 2020 at 11:31 PM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "PIA.Ombuds" <pia.ombuds@oag.state.md.us>, "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Mr. Deems and Ms Kovacs,

I looked over the documents and picked out a few specific passages. I combined those passages in the attached DNR exculpatory materials.pdf file.

These documents will also be responsive to MPIA 070120:

The B and O/ Csx railroad plat of 1958.

Ward subdivision our s-98-150

Correspondence with Governor Parris Glendening that references blocking the WRRT

Documents submitted to the General Assemby persuading, coercing, instructing, recommending, suggesting, or otherwise corresponding about the WRRT purchase.

All correspondence and documents from "lawyers advantage title company "

I realize that perhaps Ms Kovacs would consider some of these documents priveledged.

I will opine the DNR 'writ large is prosecuting my criminal case and under Brady Laws the DNR represented by Ms. Talley Kovacs has an obligation to provide all exculpatory materials.

Break in MPIA

Good Faith Settlement discussion below

Thank you for working with me on this. As I have been trying to explain this seems like we are trying $452 of grass in an old county road like a triple murder.

For me its about getting clean drinking water to my wife and children. The homes have a failed cistern. They have no water despite being improved and in town limits for 120 years. To accomplish this they needed the public road behind the 500k houses of very entitled citizens.

I told DNR agents from day one I like parks biking and hiking. All these letters Mr. Deems sent last Friday are from people that don't want a trail at all. So honestly I have no idea what DNR's issues are. If you watch the body cam I am pretty darn pleasant and respectful to DNR personnel, and show them my claim to right to be there. I also sent Ms. Kovacs a YouTube video (link below)from The week prior showing a road with grass growing in it exactly where it was suppose to be.
What "reasonable person" would notbthink it ok to drive on?
Did DNR even check into my paperwork before ordering officer Litton to fine me $1200? (Rhetorical)

At this point we are all in it together until we get it worked out. I am here in good faith to get all the information and facts because at this point in time I can see no good reason for the states actions, and subsequent bullying.

Have a good Christmas,

Justin Holder

https://youtu.be/eYZbaJuHrQg

[Quoted text hidden]

DNR exculpatory materials.pdf
1473K

Justin Holder <jholder2004@gmail.com> Wed, Dec 30, 2020 at 11:37 PM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "PIA.Ombuds" <pia.ombuds@oag.state.md.us>, "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Mr. Deems,

Please add Mike Cruz to the search.

Thank you,

Justin Holder

[Quoted text hidden]

20201230_233451.jpg
317K

Justin Holder <jholder2004@gmail.com> Wed, Dec 30, 2020 at 11:43 PM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "PIA.Ombuds" <pia.ombuds@oag.state.md.us>, "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

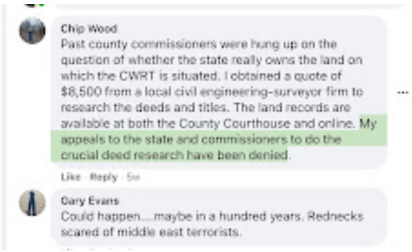
Mr. Deems,

Please add Chip Wood as well.

Thanks,

Justin Holder

[Quoted text hidden]



Chip Wood
Past county commissioners were hung up on the question of whether the state really owns the land on which the CWRT is situated. I obtained a quote of $8,500 from a local civil engineering-surveyor firm to research the deeds and titles. The land records are available at both the County Courthouse and online. My appeals to the state and commissioners to do the crucial deed research have been denied.

Gary Evans
Could happen....maybe in a hundred years. Rednecks scared of middle east terrorists.

Screen Sh(118).jpg
136K

Justin Holder <jholder2004@gmail.com> Thu, Dec 31, 2020 at 12:55 AM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "PIA.Ombuds" <pia.ombuds@oag.state.md.us>, "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

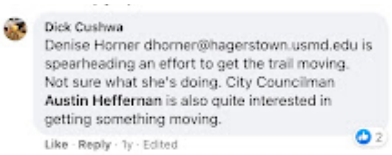
Mr. Deems,

Please add Denise Horner to the list of correspondence that is exculpatory.

Thank You,

Justin Holder

[Quoted text hidden]



Dick Cushwa

Denise Horner dhorner@hagerstown.usmd.edu is spearheading an effort to get the trail moving. Not sure what she's doing. City Councilman **Austin Heffernan** is also quite interested in getting something moving.

Screen Sh(119).jpg
65K

Justin Holder <jholder2004@gmail.com> Thu, Dec 31, 2020 at 12:57 AM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "PIA.Ombuds" <pia.ombuds@oag.state.md.us>, "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

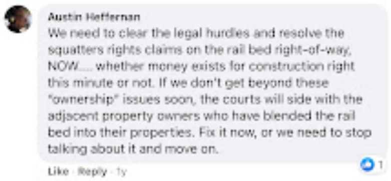
Mr. Deems,

Please add Austin Heffernan to the list of correspondence that is exculpatory.

Thank You,

Justin Holder

[Quoted text hidden]



Austin Heffernan

We need to clear the legal hurdles and resolve the squatters rights claims on the rail bed right-of-way, NOW..... whether money exists for construction right this minute or not. If we don't get beyond these "ownership" issues soon, the courts will side with the adjacent property owners who have blended the rail bed into their properties. Fix it now, or we need to stop talking about it and move on.

Screen Sh(120).jpg
99K

Justin Holder <jholder2004@gmail.com> Sun, Jan 3, 2021 at 8:09 PM
To: PIA DNR -DNR- <pia.dnr@maryland.gov>
Cc: "PIA.Ombuds" <pia.ombuds@oag.state.md.us>, "Talley H. Kovacs -DNR-" <talley.kovacs@maryland.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Mr. Deems,

In regards to the request for correspondence from Keedysville 060220. This was my very first request to DNR. We talked on the phone and I explained that utilities were denied and I was investigating it.

I attached a screenshot of an email on March 26th, 2018. From Shane Johnston, cc Mary Ironsides to ToK. To date and including the December 11th, 2020 drive upload, DNR has not provided that email. Do you have that email chain, and related correspondence?

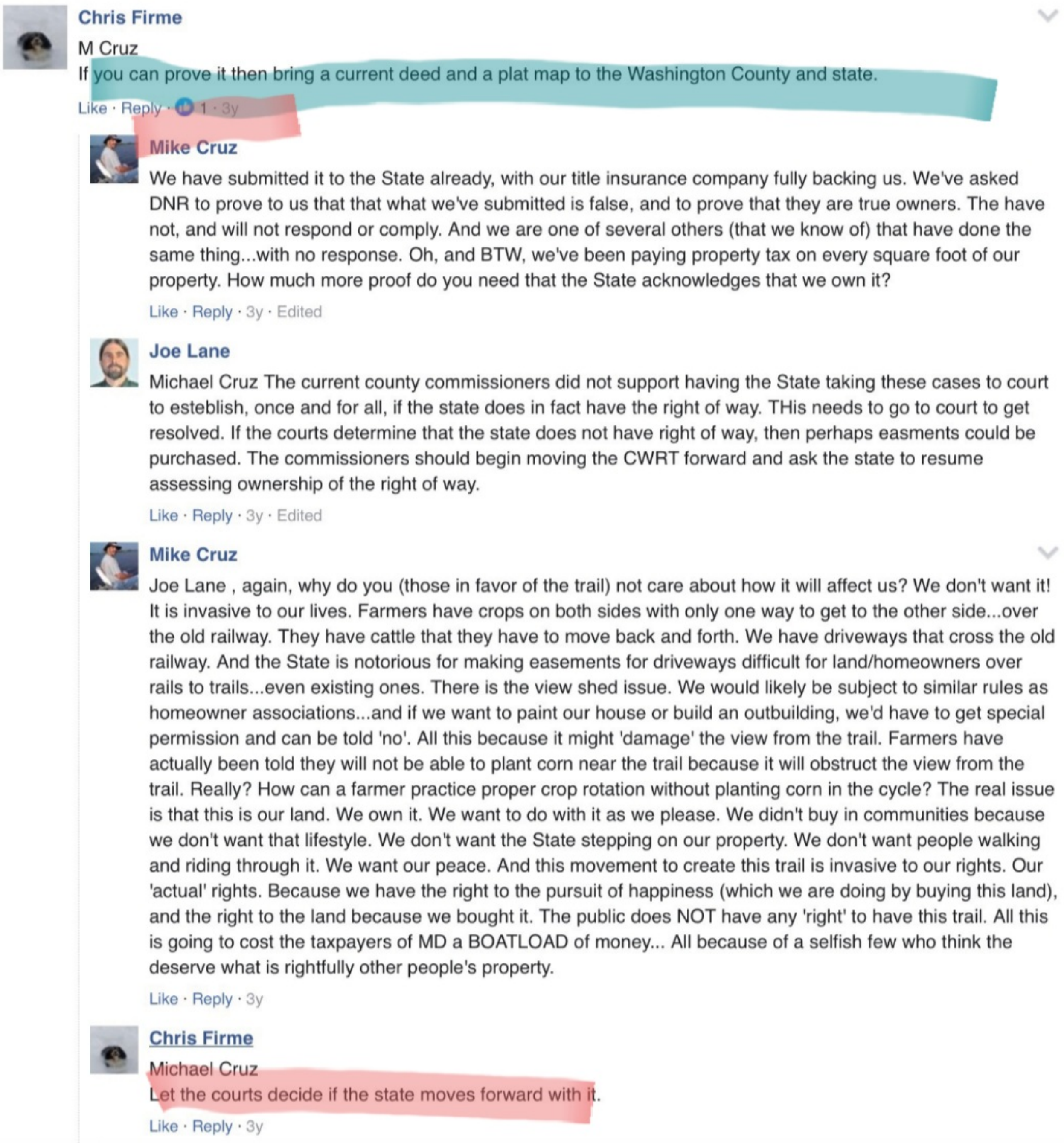
Thank you,

Justin Holder

[Quoted text hidden]

20210103_200233.jpg
114K

E241



Chris Firme

M Cruz

If you can prove it then bring a current deed and a plat map to the Washington County and state.

Mike Cruz

We have submitted it to the State already, with our title insurance company fully backing us. We've asked DNR to prove to us that that what we've submitted is false, and to prove that they are true owners. The have not, and will not respond or comply. And we are one of several others (that we know of) that have done the same thing...with no response. Oh, and BTW, we've been paying property tax on every square foot of our property. How much more proof do you need that the State acknowledges that we own it?

Joe Lane

Michael Cruz The current county commissioners did not support having the State taking these cases to court to esteblish, once and for all, if the state does in fact have the right of way. THis needs to go to court to get resolved. If the courts determine that the state does not have right of way, then perhaps easments could be purchased. The commissioners should begin moving the CWRT forward and ask the state to resume assessing ownership of the right of way.

Mike Cruz

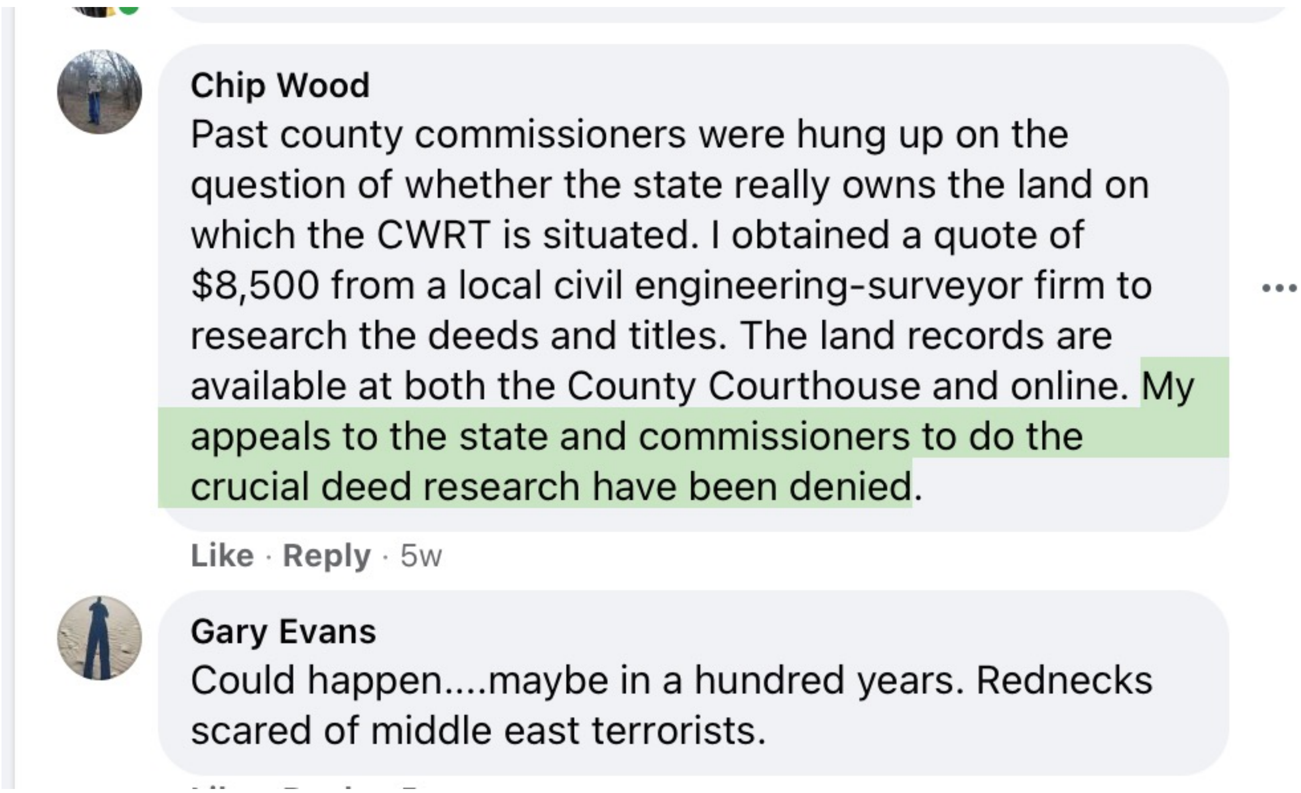
Joe Lane , again, why do you (those in favor of the trail) not care about how it will affect us? We don't want it! It is invasive to our lives. Farmers have crops on both sides with only one way to get to the other side...over the old railway. They have cattle that they have to move back and forth. We have driveways that cross the old railway. And the State is notorious for making easements for driveways difficult for land/homeowners over rails to trails...even existing ones. There is the view shed issue. We would likely be subject to similar rules as homeowner associations...and if we want to paint our house or build an outbuilding, we'd have to get special permission and can be told 'no'. All this because it might 'damage' the view from the trail. Farmers have actually been told they will not be able to plant corn near the trail because it will obstruct the view from the trail. Really? How can a farmer practice proper crop rotation without planting corn in the cycle? The real issue is that this is our land. We own it. We want to do with it as we please. We didn't buy in communities because we don't want that lifestyle. We don't want the State stepping on our property. We don't want people walking and riding through it. We want our peace. And this movement to create this trail is invasive to our rights. Our 'actual' rights. Because we have the right to the pursuit of happiness (which we are doing by buying this land), and the right to the land because we bought it. The public does NOT have any 'right' to have this trail. All this is going to cost the taxpayers of MD a BOATLOAD of money... All because of a selfish few who think the deserve what is rightfully other people's property.

Chris Firme

Michael Cruz

Let the courts decide if the state moves forward with it.

E242



Chip Wood

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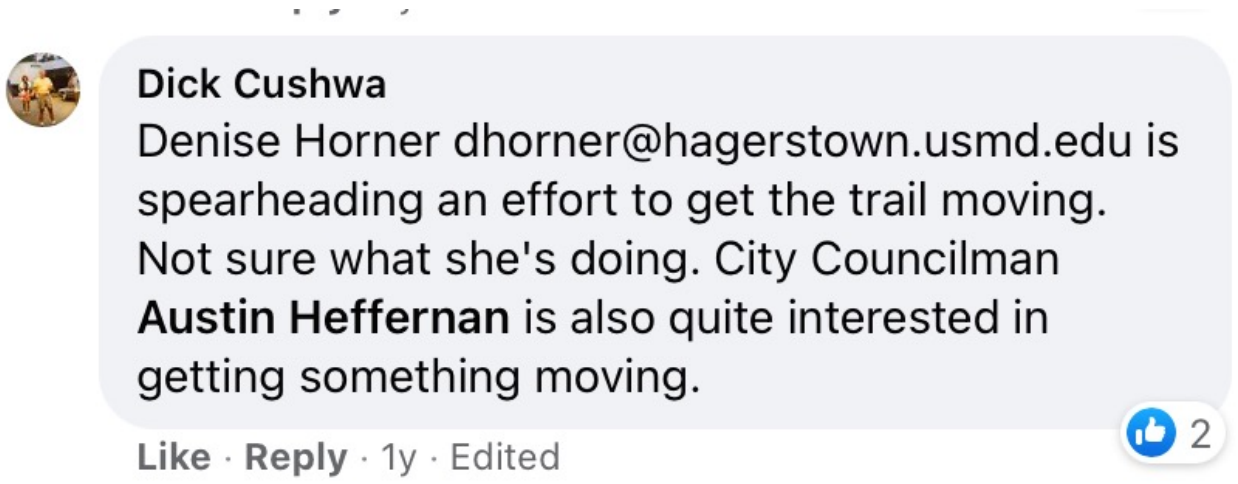
Gary Evans

Could happen....maybe in a hundred years. Rednecks scared of middle east terrorists.

E243



Dick Cushwa

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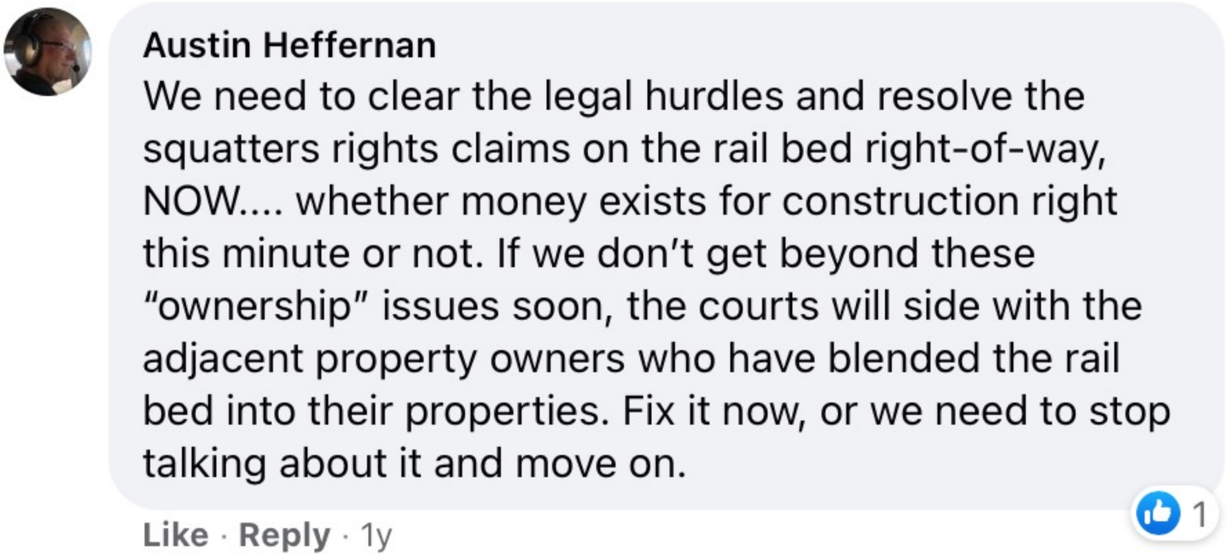

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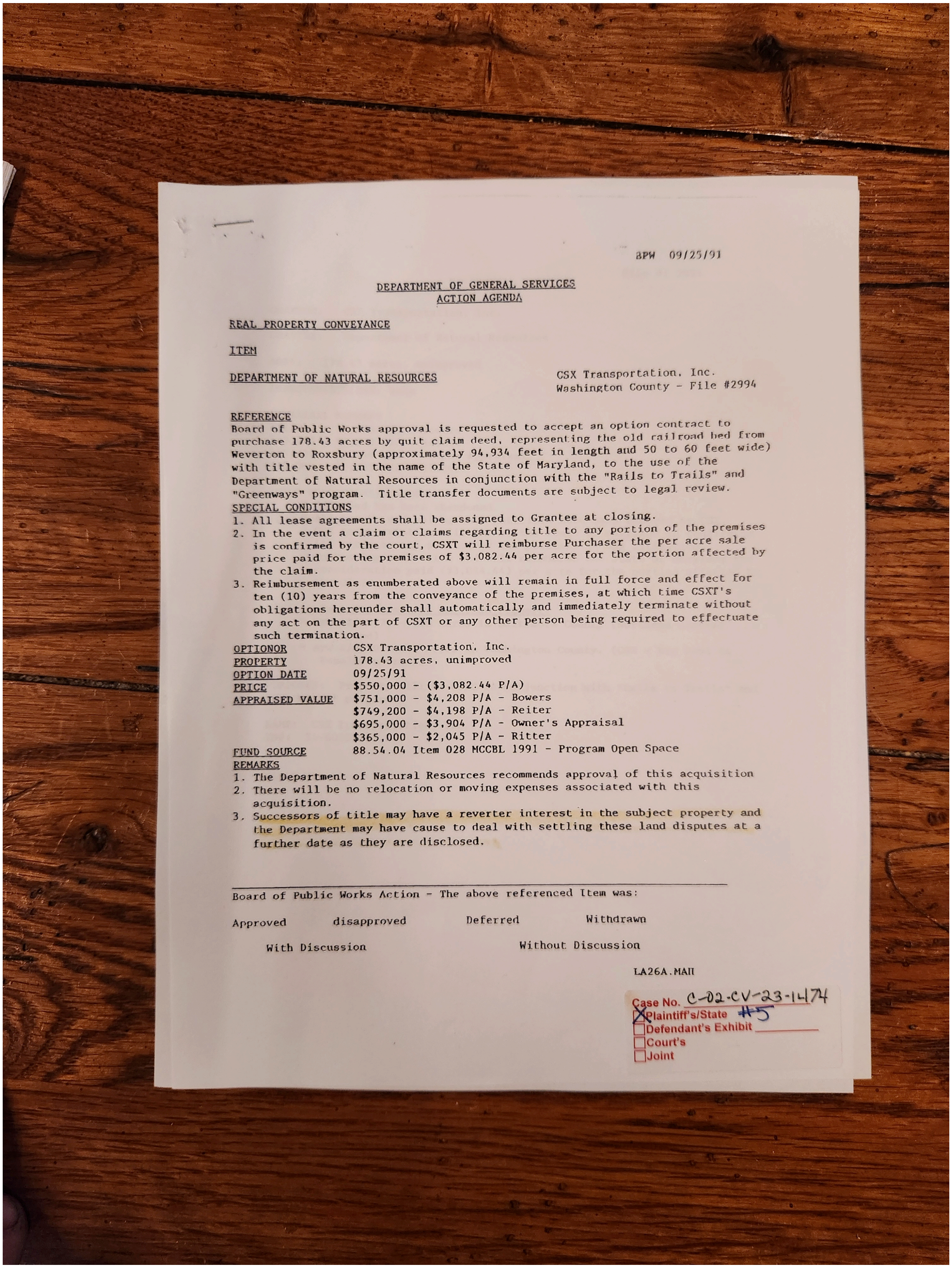

BPW 09/25/91

DEPARTMENT OF GENERAL SERVICES
ACTION AGENDA

REAL PROPERTY CONVEYANCE

ITEM

DEPARTMENT OF NATURAL RESOURCES

CSX Transportation, Inc.
Washington County - File #2994

REFERENCE

Board of Public Works approval is requested to accept an option contract to purchase 178.43 acres by quit claim deed, representing the old railroad bed from Weverton to Roxsbury (approximately 94,934 feet in length and 50 to 60 feet wide) with title vested in the name of the State of Maryland, to the use of the Department of Natural Resources in conjunction with the "Rails to Trails" and "Greenways" program. Title transfer documents are subject to legal review.

SPECIAL CONDITIONS

1. All lease agreements shall be assigned to Grantee at closing.
2. In the event a claim or claims regarding title to any portion of the premises is confirmed by the court, CSXT will reimburse Purchaser the per acre sale price paid for the premises of $3,082.44 per acre for the portion affected by the claim.
3. Reimbursement as enumberated above will remain in full force and effect for ten (10) years from the conveyance of the premises, at which time CSXT's obligations hereunder shall automatically and immediately terminate without any act on the part of CSXT or any other person being required to effectuate such termination.

OPTIONOR	CSX Transportation, Inc.
PROPERTY	178.43 acres, unimproved
OPTION DATE	09/25/91
PRICE	$550,000 - ($3,082.44 P/A)
APPRAISED VALUE	$751,000 - $4,208 P/A - Bowers
	$749,200 - $4,198 P/A - Reiter
	$695,000 - $3,904 P/A - Owner's Appraisal
	$365,000 - $2,045 P/A - Ritter
FUND SOURCE	88.54.04 Item 028 MCCBL 1991 - Program Open Space

REMARKS

1. The Department of Natural Resources recommends approval of this acquisition
2. There will be no relocation or moving expenses associated with this acquisition.
3. Successors of title may have a reverter interest in the subject property and the Department may have cause to deal with settling these land disputes at a further date as they are disclosed.

Board of Public Works Action - The above referenced Item was:

Approved disapproved Deferred Withdrawn

With Discussion Without Discussion

LA26A.MAII

Case No. C-02-CV-23-1474
☒ Plaintiff's/State #5
☐ Defendant's Exhibit
☐ Court's
☐ Joint

BPW 09/25/91

DEPARTMENT OF GENERAL SERVICES
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Approved disapproved Deferred Withdrawn

With Discussion Without Discussion

LA26A.MAH

File #: 2994

GRANTOR: CSX Transportation, Inc.

GRANTEE: Department of Natural Resources

AREA: 178.43 acres, unimproved

IMPROVEMENTS/USE: None

APPRAISAL SUMMARY
751,000 - $4,208 P/A - Bowers
749,000 - $4,198 P/A - Reiter
695,000 - $3,904 P/A - Owners Appraisal
365,000 - $2,045 P/A - Ritter

OTHER CONDITIONS/HISTORY:

- Railroad has been abandoned.
- All tracks and salvageable materials have been removed by CSX.
- CSX transportation will assist the State of Maryland in confirming its title to any portion of the premises in any litigation contesting said title and will reimburse the State of Maryland the consideration paid ($3,084.44) per acre for the portion affected by the claim.

Similar Past Purchases of Railroad Property

- BPW 12/19/79 - 289 acres in Baltimore County (Northern Central Railraod)
- BPW 8/8/90 - 287 acres in Washington County. (CSX - Big Pool to Tonolowau Creek)

PURPOSES: Property will be used in conjunction with "Rails to Trails" and "Greenways" program.

NAME: CSX Transportation, Inc.
ID#: 54-6000720

LA26B.MAH